

Australian Capital Territory

# Motor Accident Injuries (Reportable Conduct) Guidelines 2023

Disallowable instrument DI2023–312

made under the

**Motor Accident Injuries Act 2019, section 487 (MAI guidelines)**

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**1 Name of the instrument**

This instrument is the *Motor Accident Injuries (Reportable Conduct) Guidelines 2023*.

**2 Commencement**

This instrument commences on the day after its notification.

**3 Guidelines**

I make the guidelines attached to this instrument.

Nicola Clark  
MAI Commissioner  
MAI Commission

15 December 2023



# Reportable Conduct Guidelines

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## **1. INTRODUCTION**

The Reportable Conduct Guidelines (guidelines) are part of the MAI guidelines made under section 487 of the *Motor Accident Injuries Act 2019* (MAI Act). The purpose of the guidelines is to provide guidance for licensed insurers on identifying reportable conduct and providing written notice to the MAI Commission about the reportable conduct. The onus is placed on licensed insurers to identify reportable conduct through their compliance monitoring or other business activities.

These guidelines are complemented by licensed insurers' obligations under the *Motor Accident Injuries (Business Plan) Guidelines 2021* to adopt a comprehensive compliance plan to monitor compliance with an insurer's obligations under the MAI Act and Regulations, MAI guidelines, licensing conditions and the industry deed.

## **2. STATUTORY FRAMEWORK**

Section 412A of the MAI Act requires a licensed insurer to give a written notice to the MAI Commission if they become aware of reportable conduct.

The legislative framework for reportable conduct includes:

- the MAI Act;
- regulations made under the MAI Act; and
- MAI Guidelines.

## **3. REPORTABLE CONDUCT**

Section 412A(3) of the MAI Act defines the meaning of reportable conduct. This is conduct by a licensed insurer that causes, or is likely to cause, a significant contravention of an insurer's obligations under the:

- a. MAI Act, including a condition of the MAI insurer's licence,
- b. regulations made under the MAI Act,
- c. MAI Guidelines, and
- d. the insurance industry deed.

## **4. IDENTIFYING REPORTABLE CONDUCT (Section 412A)**

### **4.1 Significant Contraventions**

A significant contravention is either:

- a. a deemed significant contravention – conduct automatically deemed to be a significant contravention under the guidelines; or
- b. a significant contravention of other obligations – conduct which is assessed to be a significant contravention of other obligations against the factors in section 4.3 of the guidelines.

### **4.2 Deemed Significant Contraventions**

A deemed significant contravention by a MAI insurer occurs when their conduct:

- a. Constitutes the commission of an offence under the following sections of the MAI Act:
  - i. Section 415 (Offence—contravene court order);
  - ii. Section 416 (Offence—insurer to tell MAI commission about grounds for suspension);
  - iii. Section 417 (Offence—insurer to tell MAI commission of decrease in issued capital);
  - iv. Section 418 (Offence—insurer to tell MAI commission of bidder’s statement or target’s statement); or
  - v. Section 476 (Offences—use or divulge protected information);
- b. Constitutes a contravention of the licence condition in the MAI Act, section 371 (Protected information);
- c. Causes or is likely to cause material loss or damages to:
  - i. a MAI insurer; or
  - ii. an applicant or claimant under the MAI Act; or
- d. Involves misleading or deceptive conduct by a MAI insurer other than when the conduct:
  - i. impacts only on one applicant or claimant under the MAI Act; and
  - ii. does not cause, or is unlikely to cause any loss or damage, to the applicant or claimant (regardless of whether the conduct has been or will be remediated); and
  - iii. does not give rise or is unlikely to give rise to any other reportable conduct.

**Table 1 Examples of deemed significant contraventions.**

<p>Example 1.1 - Material loss to an applicant for defined benefits in relation to a motor accident under the MAI Act</p>	<p>Over a two-year period, an insurer’s software error results in the underpayment of income replacement benefits to applicants. Over 400 applicants were impacted with an average of \$205 of underpayments per applicant. This requires over \$80,000 of remediation payments. The materiality of the loss is also impacted by the financial circumstances of injured people with reduced capacity to work relying on income replacement benefits to assist with and support their recovery.</p>
<p>Example 1.2 Misleading or deceptive conduct by an MAI insurer</p>	<p>During a transfer process under division 2.3.5 of the MAI Act, a MAI insurer becomes aware that it holds dash camera footage that indicates it is liable as the relevant insurer. Subsequently, the MAI insurer chooses to withhold this footage from the second insurer.</p>

**4.3 Significant contraventions of other obligations**

For other contraventions or likely contraventions, the significance is assessed against the following five factors:

- a. the number and frequencies of similar contraventions;
- b. the impact of the contravention on the operation of the insurer’s business as a MAI insurer;
- c. the impact of the contravention on public confidence in the operation of the insurer or the MAI Act;
- d. the impact of the contravention on competition between MAI insurers; and
- e. whether the contravention indicates a systemic weakness in the insurer’s internal controls, systems, or compliance monitoring framework.

**Table 2 Examples of a significant contravention of other obligations.**

<p>Example 2.1 Repeated failure to include dispute information in rejection notices</p>	<p>Over a 6 month period, 10 applicants for defined benefits are impacted by a template error. Their rejection notices do not advise them of how to dispute the decision. This contravenes section 65(3)(b)(iii) of the MAI Act. This contravention is likely to be significant because the repeated nature of the contravention may indicate a systemic weakness in the insurer’s internal controls, systems, or compliance monitoring framework.</p>
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<p>Example 2.2 Repeated provision of inaccurate information about MAI premium pricing</p>	<p>A MAI insurer approves a customer service script that offers customers a reduced MAI insurance premium if they purchase Comprehensive Car Insurance. This contravenes the ancillary benefit requirements under section 6 of the <i>Motor Accident Injuries (Premiums) Guidelines</i>. This script remains in place for 6 months and is accessed on 500 occasions by customer service staff. This contravention is likely to be significant because of:</p> <ul style="list-style-type: none"> <li>• the repeated nature of the contravention may indicate a systemic weakness in the insurer’s internal controls, systems, or compliance monitoring framework;</li> <li>• the inaccurate pricing may increase the market share of the insurer, impacting competition between MAI insurers; and</li> <li>• the inaccurate pricing may impact public confidence in the operation of the insurer.</li> </ul>
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**Table 3 Examples of conduct that may not be a significant contravention of other obligations**

<p>Example 3.1 An isolated failure to report data</p>	<p>An insurer fails to report the details of a single ACAT reviewable decision. This contravenes section 5 of the <i>Motor Accident Injuries (Insurer Information Collection) Regulation 2020</i>. It is likely not to be significant unless it is repeated and indicates a systemic weakness in the insurer’s internal controls, systems, or compliance monitoring framework.</p>
<p>Example 3.2 An isolated failure to provide information to an applicant</p>	<p>An insurer does not provide a single applicant for defined benefits with a receipt notice that has the required information about income replacement benefits. The information is provided to the applicant on the next business day. This contravenes section 6 of the <i>Motor Accident Injuries (Defined Benefits Application) Guidelines 2021</i>. It is likely not to be significant as the contravention is isolated and has limited impact on the applicant’s ability to access the MAI Scheme.</p>

#### **4.4 Likely significant contravention**

A likely significant contravention is a circumstance where a licensed insurer is no longer able to comply with their obligations and the contravention, if it occurs, will be a significant contravention under section 4.1 of the guidelines.

### **5. PROVIDING WRITTEN NOTICE OF REPORTABLE CONDUCT (Sections 412A and 487)**

#### **5.1 Method for written notice**

A written notice of reportable conduct should be sent securely via email to the MAI Commission's email address: [MAIC@act.gov.au](mailto:MAIC@act.gov.au)

#### **5.2 Time for providing written notice**

An insurer has 30 days to provide written notice from the earlier of the following dates:

- a. the date they first become aware of the reportable conduct; or
- b. the date they have reasonable grounds to believe the reportable conduct has occurred.

#### **5.3 Content of a written notice**

A written notice from a licensed insurer under Section 412A(1) of the MAI Act must include:

- a. the known details about the reportable conduct, including:
  - i. date of identification;
  - ii. method of identification;
  - iii. details of the contravention or likely contravention;
  - iv. whether the contravention is a deemed significant contravention, or the factors which the licensed insurer considers apply in assessing a significant contravention of other obligations; and
  - v. how long the reportable conduct has been occurring or if it is still continuing; and
- b. the details about any action the licensed insurer has taken, or proposes to take, to:
  - i. investigate the nature and extent of the reportable conduct and any other conduct that is the same as or similar to the reportable conduct;
  - ii. remediate the reportable conduct and any other conduct identified as a result of an investigation mentioned in subparagraph (i); and
  - iii. remove or mitigate the risk of the same or similar reportable conduct happening; and
- c. the timeframes for providing progress reports for any actions the insurer proposes to take mentioned in the notice.

#### **5.4 Grouping of reportable conduct**

Reportable conduct may be grouped and reported in a single report or in a single progress report for the reportable conduct when:

- a. there is the same or similar conduct—this means conduct that is the same as or similar conduct to the identified conduct (e.g. misstatements to a number of injured persons about the same defined benefit); and
- b. the conduct has the same root cause—this means the underlying cause of the reportable conduct is the same (e.g. a specific systems error or process deficiency).

If same or similar reportable conduct is identified by an insurer during an investigation of the nature and extent of previously notified reportable conduct, details of the same or similar conduct can be reported in a progress report for the previously notified conduct. In these circumstances a separate notice under section 412A(1) will not be required.