

Motor Accident Injuries (Premiums and Administration) Regulation 2019

Subordinate law SL2019–28

made under the

Motor Accident Injuries Act 2019 (S 492)

EXPLANATORY STATEMENT

Overview

The Motor Accident Injuries (Premiums and Administration) Regulation 2019 provides the necessary delegated legislative support to the *Motor Accident Injuries Act 2019* (the Act).

The Act establishes a new improved compulsory motor accident injuries insurance scheme (MAI scheme). The MAI scheme replaces the at-fault common law scheme operating under the *Road Transport (Third-Party Insurance) Act 2008* with a new hybrid no-fault common law scheme. The Act will commence operation on 1 February 2020 and will apply to motor accidents in the ACT from that date. The MAI scheme will provide defined benefits to anyone injured in a motor accident and provide additional common law benefits to people more seriously injured and whose injury was caused by someone else's fault.

The MAI scheme will continue to be underwritten by private insurers. The Act establishes the Motor Accident Injuries (MAI) commission with the functions of the MAI commission including the licensing of insurers, the approval of MAI premiums and the supervision of insurers' compliance with their obligations under the Act.

The substantive provisions of the regulation cover elements that are essential for the operation and administration of the MAI scheme. The regulation prescribes matters in relation to defined benefit payments, MAI premium setting, the nominal defendant fund and MAI insurer licensing. The regulation is the first regulation in a number of regulations proposed to be made under the Act to give effect to the MAI scheme.

Human rights Implications

Strict liability offence - clause 23

The regulation provides a strict liability offence in clause 23 for a licensed insurer that does not pay an amount specified in a collection notice to the nominal defendant fund on or before the due date stated in the collection notice. The maximum penalty is 20 penalty units. The absence of burden of proof for a strict liability offence may engage the presumption of innocence under section 22 of the *Human Rights Act 2004*.

The offence is based on an existing offence in section 30D of the Road Transport (Third-Party Insurance) Regulation 2008.

The financial viability of the MAI scheme depends on the nominal defendant fund being fully funded to pay claims against any unidentified or uninsured motor vehicles. Licensed insurers, in turn, must pay their share of contributions to this fund in a timely manner. A licensed insurer must be a company incorporated under the *Corporations Act 2001* (Cth). It is reasonable for a licensed insurer to be fully aware of the statutory obligations of an MAI insurer under the Principal Act including the insurer's obligation to pay into the fund. The prudential benefits to the MAI scheme of the use of a strict liability offence are considered to outweigh the trespass of the presumption of innocence.

Details

Part 1 Preliminary

Clause 1 names the regulation as the Motor Accident Injuries (Premiums and Administration) Regulation 2019.

Clause 2 provides for the commencement of the regulation on the commencement of the Motor Accident Injuries Act 2019 (the MAI Act), section 3.

Clause 3 inserts a dictionary at the end of the regulation.

Clause 4 provides a note included in the regulation is explanatory and is not part of the regulation.

Clause 5 applies the Criminal Code 2002 in relation to offences against the regulation.

Part 2 Important concepts

Clause 6 defines average weekly earnings series for the purposes of section 17 of the Act as the Persons: fulltime adult total earnings series – seasonally adjusted for the ACT in Average Weekly Earnings Australia (State and Territory Earnings) issued by the Australian statistician.

Clause 7 sets out indexation days for amounts that are AWE indexed mentioned in the Act. Amounts related to income replacement benefits will be indexed on a biannual basis on 1 April and 1 October each year with the first indexation day being 1 October 2020. Other AWE indexed amounts will be indexed annually on 1 October each year.

Clause 8 sets out formulas and rules to determine an AWE indexation factor for AWE indexed amounts that are indexed on a biannual basis. An AWE indexation factor is required to be published in a notifiable instrument for a given indexation day. The factor is multiplied by an existing AWE indexed amount to determine a new AWE indexed amount that applies from a given indexation day.

Clause 9 sets out indexation formulas and rules to determine an AWE indexation factor for amounts that are indexed on an annual basis. An AWE indexation factor is required to be published in a notifiable instrument for a given indexation day. The factor is multiplied by an existing AWE indexed amount to determine a new AWE indexed amount that applies from a given indexation day.

Clause 10 sets out the adjustment days for amounts that are AWE adjusted amounts, being 1 April and 1 October each year with the first adjustment day being 1 October 2020.

Clause 11 sets out adjustment formulas and rules to determine AWE adjustment factors for pre-injury income amounts adjusted on an annual basis. An AWE adjustment factor is required to be published in a notifiable instrument for a given adjustment day. The factor is multiplied by an existing pre-injury income amount to determine a new pre-injury amount that applies for the purposes of working out income replacement benefits from a given adjustment day.

Part 3 Income replacement benefits.

Clause 12 prescribes the amount of an interim weekly income payment as 22.5 percent of the pre-injury weekly income cap, being \$2,250 AWE indexed. This amount aligns closely with the interim payment available under the NSW Motor Accident Injuries Scheme.

Clause 13 enables a notification about a change in circumstance from a person receiving income replacement payments to be given either orally or in writing. If a notification is given orally it must be confirmed in writing no later than 10 days after the oral notification was given. A change of circumstances occurs if the person returns to or starts paid work, or if the amount of income they receive from work changes.

Part 4 MAI premiums

Part 4 of the regulation sets out a mechanism for the assessment of MAI premiums for different classes and sub-classes of motor vehicles.

Clause 14 defines an annual MAI premium and a MAI premium class. An annual MAI premium is a premium covering a period of one year. An MAI premium class is a class set out in a table in Schedule 1 part 1.2. Before an insurer can charge a premium for a vehicle there needs to be a corresponding MAI premium class. Column 2 of the table provides a premium class number for each item in the table. Column 2 is presented in numerical order to ensure consistency between the regulation and administrative usage. Column 3 of the table sets out the kind of motor vehicle or trader's plate covered by each item, with column 4 of the table containing any further case specifications for a given item. Column 5 of the table describes whether a MAI premium for an item includes an input tax credit entitlement.

Clause 15 requires insurers to seek approval from the MAI commission for the imposition of annual MAI premiums for each class of vehicle.

Clause 16 clarifies that where a vehicle fits into two or more premium classes that the maximum premium payable is determined as the higher of the maximum premiums that apply to the vehicle or plate. This ensures that the premium paid reflects the appropriate risk involved in the use of the vehicle.

Clause 17 requires MAI premiums for MAI policies of less than one year to be worked out in accordance with the MAI guidelines (premiums).

Clause 18 imposes an additional premium on the owner of a motor vehicle, if the construction or use of a motor vehicle change during the currency of an MAI policy, and because of the change a higher MAI premium would apply to a new policy for the vehicle. The additional premium is worked out, starting on the day the change happened, in accordance with the MAI guidelines (premiums). For example, the clause would apply to a family car, that becomes a rideshare vehicle, during the currency of an MAI policy. This ensures the additional premiums reflect the risk of the new use or construction of the vehicle.

Part 5 Nominal defendant

Clause 19 prescribes circumstances that a motor vehicle has sufficient connection with the ACT for the purposes of determining whether the nominal defendant is liable in respect of a personal injury caused by a motor accident involving an uninsured motor vehicle. Given the proximity of the ACT to NSW, this provision has particular importance in respect of minimising the cost to the nominal defendant fund.

Clause 20 sets out prescribed persons responsible for funding collections for the nominal defendant fund. These persons are each licensed insurer, the Territory and the Commonwealth.

Clause 21 enables the MAI commission to determine the proportion of the amount to be collected from each prescribed person, for the nominal defendant fund, for each quarter. In determining a person's respective share, the MAI commission has regard to MAI premiums paid or that would have been payable, for given vehicles for the quarter.

Clause 22 requires the MAI commission to issue collection notices to prescribed persons for amounts to be collected for the nominal defendant fund.

Clause 23 makes it an offence, with a maximum of 20 penalty units, if a licensed insurer does not pay an amount in a collection notice by the due date for a notice. The Magistrates Court may also order a licensed insurer that is convicted or found guilty of an offence, to pay any unpaid amount, including interest, to the nominal defendant fund.

Part 6 MAI Insurer licences

Clause 24 requires the MAI commission to approve the required content of the insurance industry deed and for the approval to be a disallowable instrument. The required content of the insurance industry deed must be substantially in accordance with the content approved and reflect the approval.

Clause 25 sets out information that must be included in or accompany an application for an MAI insurer licence. The information will include a copy of the applicant's draft business plan so the MAI commission can assess an insurer's capacity to handle both defined benefit applications and motor accident claims under the MAI Act. Additional financial and prudential information will also be required to be provided by applicants not licenced to carry on a CTP business in another Australian jurisdiction.

Schedule 1 MAI premium classes

Part 1.1 defines terms in relation to the table in part 1.2.

Part 1.2 sets out a table of MAI premium classes for the purpose of clause 14.

Dictionary

The Dictionary contains terms relevant to the Regulation.