

Motor Accident Injuries (Premiums and Administration) Amendment Regulation 2020 (No 1)

Subordinate law SL2020–11

made under the

Financial Management Act 1996, Motor Accident Injuries Act 2019, Road Transport (General) Act 1999 and the Road Transport (Public Passenger Services) Act 2001

EXPLANATORY STATEMENT

Overview

The *Motor Accident Injuries Act 2019* (MAI Act) commenced on 1 February 2020 and applies to motor vehicle accidents in the ACT from that date. The *Motor Accident Injuries (Premiums and Administration) Regulation 2019* provides necessary legislative support to the Motor Accident Injuries (MAI) Scheme.

The purpose of the Motor Accident Injuries (Premiums and Administration) Amendment Regulation 2020 (No 1) is to amend the *Motor Accident Injuries (Premiums and Administration) Regulation 2019* to further support the administration of the MAI Scheme.

The regulation prescribes matters incidental to the administration of the MAI Act being treatment and care requirements for a person to be taken to have a whole person impairment level of 10 per cent; a definition of medical treatment for a future treatment payment under chapter 4 of the MAI Act; costs for mandatory final offers for motor accident claims; and other administrative matters.

The regulation also makes some consequential amendments to the *Financial Management Regulation 2005*, the *Road Transport (Offences) Regulation 2005* and the *Road Transport (Public Passengers Services) Regulation 2002*.

Details

Clause 1 provides for the name of the regulation. Other than schedule 1, all references to regulation are to the *Motor Accident Injuries (Premiums and Administration) Amendment Regulation 2020 (No 1)*.

Clause 2 provides for the commencement of the regulation (other than sections 4 and 7) on the day after its notification day. Sections 4 and 7 will commence on the later of the commencement of *the Motor Accident Injuries (ACAT Costs Orders) Regulation 2020*, and this regulation, as those sections relate to the *Motor Accident Injuries (ACAT Costs Orders) Regulation 2020*.

Clause 3 provides that the regulation amends the *Motor Accident Injuries (Premiums and Administration) Regulation 2019*. The note indicates other regulations are amended by schedule 1.

Clause 4 inserts a note to section 7(2) to clarify that the indexation day for an amount that is to be AWE indexed mentioned in section 6(3) of *the Motor Accident (ACAT Costs Orders) Regulation 2020*, is 1 October.

Clause 5 inserts new section 7(2A) to prescribe that the indexation day for the amount mentioned in section 13C(c) that is to be AWE indexed is 1 October. The day is required to be prescribed by regulation (see section 18(1)(b), MAI Act).

Clause 6 inserts new section 9(1A) to apply section 9 to AWE indexed amounts under section 13C(c) of the regulation.

Clause 7 substitutes section 9(1A) to apply section 9 to both AWE indexed amounts under section 13C(c) of the regulation and section 6(3) of the *Motor Accident (ACAT Costs Orders) Regulation 2020*. Section 9 of the *Motor Accident Injuries (Premiums and Administration) Regulation 2019* prescribes how to work out the AWE indexation factor for an amount that is AWE indexed on an annual basis. This substitution is required because of section 6(3) of the *Motor Accident (ACAT Costs Orders) Regulation 2020*.

Clause 8 inserts new parts 3A to 3C.

Part 3A Quality of life benefits

Section 13A set outs the treatment and care requirements that an injured person who was a child at the date of a motor accident must meet at 4 years and six months after a motor accident to be taken to have a whole person impairment of 10 percent. The injured person must, at this point in time, have a current recovery plan under part 2.5 of the MAI Act, requiring the person to receive ongoing treatment and care and be undergoing treatment and care approved by the relevant insurer in accordance with the Act.

Part 3B Medical Treatment

Chapter 4 of the MAI Act provides for the payment of future medical treatment expenses, for a person injured through no fault of their own and who cannot make a motor accident

claim as their whole person impairment is less than 10 percent. The payment can cover medical treatment for a further five years after the five years of defined benefits end.

Under section 222 of the MAI Act a person may only apply for the payment if they have been receiving treatment and care benefits related to medical treatment at 4 years and six months after the date of the accident, and they have been receiving medical treatment continuously for at least 2 years and six months. The payment can cover medical treatment of the same kind received in the six-month period following the 4th anniversary of the motor accident, and that the insurer has paid or agreed to pay for.

Section 13B defines medical treatment for the purposes of Chapter 4 of the MAI Act as treatment provided by a health practitioner except for all treatments provided by paramedic practitioners, and general treatment provided by dental and optometry practitioners. By way of example the following treatments would not be covered:

- Transport by an ambulance to a medical appointment
- A check-up and clean and scale with a dentist or dental hygienist
- A periodic consultation with an optometrist to review a lens prescription

Treatments provided by a dentist registered as a dental specialist with the Dental Board of Australia, and optometry treatments after medical surgery will still qualify as medical treatment for the purposes of Chapter 4.

Part 3C Motor accident claims

Section 13C sets out how to work out costs for a mandatory final offer that is accepted for at least \$30,000 but not more than \$50,000. The costs must be worked out on a party to party basis, be paid by the insurer and not exceed \$5,000 AWE indexed. The section is based on a similar provision in the former *Road Transport (Third-Party Insurance) Regulation 2008*.

Clause 9 inserts new section 23(1A) to provide that the offence against section 23, being the failure of a licensed insurer to pay a contribution to the nominal defendant fund, is a strict liability offence. This clarifies that the offence is a strict liability offence as indicated in the explanatory statement for the *Motor Accident Injuries (Premiums and Administration) Regulation 2019*. That explanatory statement discusses human rights implications.

Schedule 1

Schedule 1 sets out consequential amendments to other legislation in relation to the MAI Scheme.

Part 1.1 Financial Management Regulation 2005

The amendment prescribes the CTP regulator as a division 9.7 authority under the *Financial Management Act 1996*. This amendment recognises that the CTP regulator ceased to exist on commencement of the MAI Act. The effect of the amendment is to vest the assets, rights and liabilities of the CTP regulator with the Territory. In addition, responsibility for preparing and signing financial and performance statements for the CTP regulator for the 2019-2020 financial year under the Financial Management Act 1996 will transfer to the Treasurer.

Part 1.2 Road Transport (Offences) Regulation 2005

The amendment updates a cross-reference to the offence provision and to the *Motor Accident Injuries (Premiums and Administration) Regulation 2019*.

Part 1.3 Road Transport (Public Passenger Services) Regulation 2002

The amendment updates cross-references to the *Motor Accident Injuries (Premiums and Administration) Regulation 2019*.