

Motor Accident Injuries (Premiums and Administration) Amendment Regulation 2023 (No 1)

Subordinate law SL2023–37

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).

Under section 394D of the Act, the MAI Commission may impose a financial penalty on a licensed MAI insurer. Before deciding to impose a financial penalty, the MAI Commission must give a show cause notice to the insurer and provide the insurer with an opportunity to make a written submission about the proposed financial penalty. In addition, the MAI Commission must consider any written submissions from the insurer and the matters prescribed by regulation. A financial penalty can then only be imposed if the MAI Commission is satisfied that a ground for a financial penalty exists, the imposition of the penalty is in the public interest and is appropriate taking into account the nature of the contravention.

The regulation prescribes matters for the purposes of section 394D(1)(c) of the Act which the MAI Commission must consider before deciding to impose a financial penalty on an insurer. The prescribed matters include matters that relate to the nature and impact of the conduct in relation to the licensed insurer, the operation of the Act and persons affected by the conduct. Provision is also made for the Commission to consider the same or similar conduct, to the given conduct. The Commission may also consider any other matter which it considers relevant to the given conduct.

Human Rights Implications

There are no human rights implications identified in relation to the regulation. The financial penalty provisions apply to an insurer (a corporation) and not individuals.

Details

Clause 1 names the regulation as the Motor Accident Injuries (Premiums and Administration) Amendment Regulation 2023 (No 1).

Clause 2 provides for the commencement of the regulation on the day after notification day.

Clause 3 provides that the regulation amends the *Motor Accident Injuries (Premiums and Administration) Regulation 2019*.

Clause 4 inserts new section 26 into the *Motor Accident Injuries (Premiums and Administration) Regulation 2019*.

Section 26(1) prescribes matters for the purposes of section 394D(1)(c) of the Act that the MAI Commission must consider before imposing a financial penalty on a licensed insurer in relation to conduct of the insurer that constitutes a ground for a financial penalty. The MAI Commission must have regard to all prescribed matters in section 26(1) but will not need to consider a matter if it is not relevant in relation to the given conduct.

Section 26(1)(a) prescribes the matter in relation to any adverse effect or likely adverse effect of the conduct on the insurer's payment of any amount which a person is entitled, including defined benefits and common law damages amounts.

Section 26(1)(b) prescribes any adverse effect or likely adverse effect of the conduct on a person's recovery from their injuries sustained as a result of a motor accident.

Section 26(1)(c) includes the matter of whether the insurer reported the conduct to the MAI Commission. This would include but is not limited to conduct reported by the insurer under section 412A of the Act.

Section 26(1)(d) includes matters allowing the MAI Commission to consider any action taken by the insurer to investigate the nature and extent of the conduct; remediate the conduct; and remove or mitigate the risk of similar conduct happening. The MAI Commission may decide not to impose a penalty in circumstances where an action has been delayed due to circumstances beyond the insurer's control.

Section 26(1)(e) includes the matter of whether the conduct was caused, or likely to have been caused by a failure of the insurer's systems or procedures. The MAI Commission may decide not to impose a penalty if conduct is related to a one off isolated matter and was not caused by ongoing system or control failures.

Section 26(1)(f) includes matters allowing the MAI Commission to consider whether an insurer has contravened a direction under section 394G or section 394I of the Act, or a remediation plan approved under the Act, for the conduct or any similar conduct.

Section 26(1)(g) prescribes matters relating to any effect, or likely effect, of the conduct on the insurer. These matters include the adverse effect or likely adverse effect, on public confidence in the insurer, and any effect or likely effect on the operation of the insurer's business as an MAI insurer. Any financial implications, or likely financial implications, for the

insurer are also to be considered, which could include both beneficial and negative impacts on the insurer.

Section 26(1)(h) prescribes the matter of any effect, or likely effect of the conduct on competition between insurers. Section 26(1)(i) prescribes the matter of any adverse effect or likely adverse effect of the conduct relating to the operation of the Act. Section 26(1)(j) then prescribes the matter in relation to any adverse effect, or likely adverse effect, of the conduct on public confidence in the Act. Section 26(1)(i) and section 26(1)(j) are standalone sections as these matters may not always go to the operation of the Act.

Section 26(1)(k) allows the MAI Commission to consider any similar conduct, including similar conduct self-reported to the commission; and any action taken by the insurer to investigate the nature and extent of the similar conduct; remediate the similar conduct; and remove or mitigate the risk of further similar conduct happening. The MAI Commission may consider whether multiple contraventions of a provision occurred in deciding to impose a single penalty for the conduct.

Section 26(1)(l) allows the MAI Commission to consider any other matter it considers relevant in relation to conduct of an insurer constituting a ground for a financial penalty.

Section 26(2) defines similar conduct for the purposes of section 26 that is conduct of the licensed insurer that is the same as or similar to the conduct constituting the ground for the financial penalty.