

Queensland



# **MOTOR ACCIDENT INSURANCE ACT 1994**

**Reprinted as in force on 28 June 2002  
(includes amendments up to Act No. 24 of 2002)**

**Reprint No. 4C**

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# Information about this reprint

This Act is reprinted as at 28 June 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



# MOTOR ACCIDENT INSURANCE ACT 1994

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# **MOTOR ACCIDENT INSURANCE ACT 1994**

[as amended by all amendments that commenced on or before 28 June 2002]

**An Act to provide for a compulsory third-party insurance scheme covering liability for personal injury arising out of motor vehicle accidents, and for other purposes**

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Motor Accident Insurance Act 1994*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **3 Objects**

The objects of this Act are—

- (a) to continue and improve the system of compulsory third-party motor vehicle insurance, and the scheme of statutory insurance for uninsured and unidentified vehicles, operating in Queensland; and
- (aa) to establish a basis for assessing the affordability of insurance under the statutory insurance scheme and to keep the costs of insurance at a level the average motorist can afford; and
- (b) to provide for the licensing and supervision of insurers providing insurance under policies of compulsory third-party motor vehicle insurance; and
- (c) to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents; and

- (d) to promote and encourage, as far as practicable, the rehabilitation of claimants who sustain personal injury because of motor vehicle accidents; and
- (e) to establish and keep a register of motor vehicle accident claims to help the administration of the statutory insurance scheme and the detection of fraud; and
- (f) to promote measures directed at eliminating or reducing causes of motor vehicle accidents and mitigating their results.

#### 4 Definitions

In this Act—

**“act of terrorism”** see section 4B.

**“administration fee”** means the fee payable to transport administration for work done in the administration of the statutory insurance scheme.

**“affordability index”** means 45% of average weekly earnings.

**“assessment period”** see section 13(2).

**“average weekly earnings”** means the seasonally adjusted amount of Queensland full-time adult persons ordinary time earnings as declared by the Australian Statistician in the statistician’s report on average weekly earnings,<sup>1</sup> averaged over the last 4 quarters for which the statistician’s report is available.

**“claim”** means motor vehicle accident claim.

**“claimant”** means a person by whom, or on whose behalf, a claim is made.

*Examples of claimants—*

1. An attorney acts under an enduring power of attorney under the *Powers of Attorney Act 1998* for a person injured in a motor vehicle accident. In this case, both the attorney (in the attorney’s representative capacity) and the person for whom the attorney acts are regarded as claimants.
2. A guardian or an administrator acts under the *Guardianship and Administration Act 2000* for a person injured in a motor vehicle accident. In this case, the guardian or administrator (in his or her representative capacity) and the injured person are regarded as claimants.

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<sup>1</sup> The publication is currently entitled ‘Average Weekly Earnings, Australia’.

**“class”** —

- (a) of CTP insurance (or CTP insurance policies)—means CTP insurance (or CTP insurance policies) for a particular class of motor vehicles; or
- (b) of motor vehicles—means a class of motor vehicles created by classification under a regulation.

**“commission”** means the Motor Accident Insurance Commission.

**“commissioner”** means the insurance commissioner.

**“compulsory conference”** see section 51A(1).

**“costs”** —

- (a) when used in reference to legal costs, includes disbursements; and
- (b) when used in reference to the costs of an insurer on a claim, includes—
  - (i) the amount paid out by the insurer on the claim to the claimant or for the claimant’s benefit, including—
    - (A) the cost to the insurer of providing rehabilitation services in connection with the claim; and
    - (B) the cost to the insurer of paying private hospital, medical and pharmaceutical expenses in connection with the claim; and
  - (ii) the cost to the insurer of investigating the claim and of litigation related to the claim (but not the insurer’s general administration costs).

**“costs statement”** see section 51B(6)(e).

**“court”**, in relation to a claim, means—

- (a) if a proceeding based on the claim has been brought—the court hearing the proceeding; or
- (b) if no proceeding based on the claim has been brought—a court with jurisdiction to hear the claim.

**“criminal history”**, of a person, means the record of offences of which the person has been convicted in Queensland or elsewhere before or after the commencement of this Act.

**“CTP”** is an abbreviation of ‘compulsory third-party’.

**“CTP insurance policy”** means—

- (a) a policy of insurance under this Act for a motor vehicle insuring against liability for personal injury caused by, through or in connection with the motor vehicle; or
- (b) a policy of insurance, or a statutory indemnification, for a motor vehicle registered under the law of another State or a Territory, providing insurance, or indemnifying against liability, for personal injury caused by, through or in connection with the vehicle anywhere in Australia.

**“former Act”** means the *Motor Vehicles Insurance Act 1936*.

**“GST”** means the tax payable under the GST law.

**“GST law”** means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth); and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods and services.

**“GVM”** means gross vehicle mass.

**“industry deed”** means an agreement, in the form approved by regulation, between the commission, transport administration, the Nominal Defendant and licensed insurers regulating the conduct of CTP insurance business and matters incidental to—

- (a) the conduct of the business; or
- (b) the statutory insurance scheme.<sup>2</sup>

**“injured person”** means a person who suffers personal injury because of a motor vehicle accident.

**“insurance premium”** means the gross premium for a CTP insurance policy (including levies and administration fee).

**“insured motor vehicle”** means a motor vehicle for which a CTP insurance policy is in force.

**“insured person”** means—

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<sup>2</sup> For a statement of the subjects that may be covered by the industry deed, see section 65 (Industry deed).

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- (a) a person who is insured under a CTP insurance policy or, if the person is dead, the person's personal representative; or
- (b) a person whose wrongful act or omission causes personal injury for which an action lies against the Nominal Defendant under this Act or, if the person is dead, the person's personal representative.

**“insurer’s premium”** means an insurer’s consideration for providing insurance under a CTP insurance policy.

**“licence”** means a licence under part 5.

**“licensed insurer”** means an insurer that holds a licence, other than an insurer whose licence is under suspension.

**“mandatory final offer”** see section 51C(2).

**“mobile machinery”** has the meaning given by the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*.

**“motor vehicle”** means a vehicle for which registration is required under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999* and includes a trailer.

**“motor vehicle accident”** means an incident from which a liability for personal injury arises that is covered by insurance under the statutory insurance scheme.

**“motor vehicle accident claim”** means a claim for damages based on a liability for personal injury arising out of a motor vehicle accident and, for a fatal injury, includes a claim on behalf of the deceased’s dependants or estate.

**“non-medicinal drug”** means a drug other than one genuinely and lawfully consumed for medical or therapeutic purposes.

**“officer”** has the same meaning as in the Corporations Act.

**“official panel of medical experts”** see section 45A(1)(a).

**“personal injury”** includes—

- (a) fatal injury; and
- (b) prenatal injury; and
- (c) damage to spectacles, contact lenses, dentures, hearing aids, crutches, wheelchairs, artificial limbs and prosthetic devices.

**“public place”** has the meaning given by the *Transport Operations (Road Use Management) Act 1995*.

**“registered operator”**, of a motor vehicle, means a person recorded in the details of the registration of the vehicle as the registered operator or as the owner of the motor vehicle.

**“registration”**, of a motor vehicle, includes a permit, plate or other authorisation under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999* permitting a motor vehicle to be used on a road without registration but does not include an authorisation under section 62<sup>3</sup> of that regulation.

**“rehabilitation”** means the use of medical, psychological, physical, social, educational and vocational measures (individually or in combination)—

- (a) to restore, as far as reasonably possible, physical or mental functions lost or impaired through personal injury; and
- (b) to optimise, as far as reasonably possible, the quality of life of a person who suffers the loss or impairment of physical or mental functions through personal injury.

**“related body corporate”**, for an insurer, has the meaning given by the Corporations Act.

**“road”** has the meaning given by the *Transport Operations (Road Use Management) Act 1995*.

**“self-insurer”** means—

- (a) the Commonwealth; or
- (b) a State (other than Queensland) or a Territory that does not have its motor vehicles insured under CTP insurance policies.

**“share”** of the market for CTP insurance business means a percentage, calculated by the commission under principles prescribed by regulation, representing the proportion that an insurer’s share of total CTP insurance premiums bears to the total premiums for CTP insurance policies of classes specified by regulation.

**“statutory insurance scheme”** means the insurance scheme established by this Act.

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3 *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*, section 62 (Authorisation to use unregistered vehicle on roads)



**“trailer”** means a vehicle without motive power designed to be hauled by a motor vehicle.

**“transport administration”** means—

- (a) the chief executive of the department within which the *Transport Planning and Coordination Act 1994* is administered; or
- (b) a person who is, by delegation or direction of the chief executive, responsible for carrying out functions relevant to the administration of the statutory insurance scheme.

**“uninsured motor vehicle”** means a motor vehicle for which there is no CTP insurance policy in force, other than a motor vehicle owned by a self-insurer or a trailer.

**“wrongful act or omission”** includes a negligent act or omission.

#### **4A References to insurer’s premium, a fee or costs**

A reference in this Act to an insurer’s premium, a fee or costs extends to any related charge (whether treated as a component of the premium, fee or costs or separately identified) to reimburse or offset the liability of the person to whom the premium, fee or costs are payable for GST.

#### **4B Meaning of “act of terrorism”**

(1) An **“act of terrorism”** is an act done or threat made by a person —

- (a) for an ethnic, ideological, political, religious or similar purpose; and
- (b) with the intention to—
  - (i) cause personal injury or damage to property; and
  - (ii) influence a government or put the public, or a section of the public, in fear.

(2) It does not matter whether the person is acting alone or with others or in connection with an organisation or government.

(3) To decide whether the act was done or the threat was made for a purpose or with an intention mentioned in subsection (1), regard may be had to the nature of the act or threat and the context in which the act was done or the threat was made.

## **5 Application of this Act**

(1) This Act applies to personal injury caused by, through or in connection with a motor vehicle if, and only if, the injury—

- (a) is a result of—
  - (i) the driving of the motor vehicle; or
  - (ii) a collision, or action taken to avoid a collision, with the motor vehicle; or
  - (iii) the motor vehicle running out of control; or
  - (iv) a defect in the motor vehicle causing loss of control of the vehicle while it is being driven; and
- (b) is caused, wholly or partly, by a wrongful act or omission in respect of the motor vehicle by a person other than the injured person.

(2) For an uninsured motor vehicle, subsection (1) applies only if the motor vehicle accident out of which the personal injury arises happens on a road or in a public place.

(3) However, this Act does not apply to personal injury caused by, through or in connection with—

- (a) a tractor, backhoe, bulldozer, end-loader, forklift, industrial crane or hoist, or other mobile machinery; or
- (b) an agricultural implement; or
- (c) a motor vehicle adapted to run on rail or tram tracks; or
- (d) an amphibious vehicle; or
- (e) a motor vehicle of a class prescribed by regulation;

unless the motor vehicle accident out of which the injury arises happens on a road.

(4) For subsection (1)(b), the reference to a wrongful act or omission in respect of the motor vehicle does not include the use of the motor vehicle at the particular time it is being used for the actual doing of an act or making of a threat that is an act of terrorism.

(5) The following is an example of a particular time when a motor vehicle is not being used for the actual doing an act that is an act of terrorism—

A is the driver of a motor vehicle from which a bomb is thrown at a government building. It is established that at the time the bomb is thrown the motor vehicle is being used for an act of terrorism. In driving away from the building after the bomb is thrown, A runs into a motor vehicle being driven by B. At the time A's motor vehicle runs into B's motor vehicle A's motor vehicle is not being used for the actual doing of an act of terrorism.

(6) Subsection (4) only applies to an act of terrorism happening on or after 1 January 2002.

## **PART 2—MOTOR ACCIDENT INSURANCE COMMISSION**

### *Division 1—Establishment of the commission*

#### **6 Establishment of commission**

The Motor Accident Insurance Commission is established.

#### **7 Constitution of the commission**

(1) The insurance commissioner, in the commissioner's official capacity (but not in the capacity of Nominal Defendant), constitutes the commission.

(2) The insurance commissioner is to be employed under the *Public Service Act 1996*.

#### **8 Commission to be body corporate**

(1) The commission—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued under the name Motor Accident Insurance Commission.

(2) The commission has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) employ staff (including temporary staff); and
- (d) appoint agents and attorneys; and
- (e) engage consultants; and
- (f) fix charges, and other terms, for the provision of services by the commission.

(3) The commission's seal is to be kept as directed by the commissioner and may be used only as directed or authorised by the commissioner.

(4) Judicial notice must be taken of the imprint of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

## **9 Power of delegation**

The commission may delegate its powers under this Act.

### **9A Commission is statutory body**

(1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the commission is a statutory body.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the commission's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### *Division 2—General functions of commission*

## **10 Commission's functions**

- (1) The commission's functions are to—
- (a) supervise insurers operating under the statutory insurance scheme and issue, suspend or withdraw licences for insurers operating under the scheme; and
  - (b) establish and revise prudential standards with which licensed insurers must comply; and

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- (c) monitor the management of claims by insurers under the statutory insurance scheme and, in particular, the insurers' compliance with their obligations under part 4; and
- (ca) appoint, under the industry deed, a person to arbitrate disputes between 2 or more insurers about a motor vehicle accident claim; and
- (d) fix for each class of CTP insurance the range within which an insurer's premium must fall; and
- (da) recommend the levies and the administration fee payable under this Act; and
- (e) monitor the availability, adequacy and use of rehabilitation services for claimants who suffer personal injury in motor vehicle accidents and develop programs, resources and guidelines to overcome deficiencies in the services; and
- (f) provide funds for, or contribute in other ways to, the provision of infrastructure to facilitate the rehabilitation of persons injured in motor vehicle accidents; and
- (g) provide funds for research and education in the field of rehabilitation and the provision of rehabilitation services; and
- (h) provide funds for research into the causes of motor vehicle accidents and their prevention; and
- (ha) establish and maintain a call centre from which the public may obtain information on the statutory insurance scheme; and
- (i) carry out, or contribute to, advertising campaigns to increase public awareness of the causes of motor vehicle accidents, and of the economic, social and personal cost of motor vehicle accidents; and
- (j) promote and, if funds are available, make financial contributions towards—
  - (i) the regular inspection of motor vehicles to ensure safety and roadworthiness; and
  - (ii) the training of drivers (including the provision of defensive driving courses); and
  - (iii) training in first aid; and

- (iv) the provision, maintenance and support of the infrastructure necessary to reduce the incidence of motor vehicle accidents and minimise the results; and
- (k) monitor the efficiency of the statutory insurance scheme and, in particular, the proportion of the funds of the scheme paid to claimants or applied for their direct benefit; and
- (l) develop and coordinate strategies to identify and combat fraud in or related to motor vehicle accident claims; and
- (m) keep the industry deed under review and make recommendations for its amendment; and
- (n) keep the statutory insurance scheme generally under review and make recommendations for its amendment.

(2) In determining prudential standards for licensed insurers, the commission must have proper regard to the prudential standards that apply to the insurance industry under Commonwealth legislation.

## **11 Advisory committees**

(1) The commission may establish 1 or more advisory committees to advise on the exercise of the commission's statutory functions.

(2) The matters on which an advisory committee may provide advice are to be decided by the commission with the approval of the Minister.

(3) An advisory committee is to consist of persons appointed by the Minister on the commission's nomination.

(4) The terms on which the members of an advisory committee hold office are to be decided by the Minister.

### *Division 3—Insurance premiums*

## **12 Insurance premiums**

(1) An insurance premium under the statutory insurance scheme consists of the following components—

- (a) the insurer's premium;
- (b) the statutory insurance scheme levy;
- (c) the hospital and emergency services levy;

- (d) the Nominal Defendant levy;
- (e) the administration fee.

(2) The insurer's premium is the insurer's consideration for providing the insurance.

(3) The statutory insurance scheme levy is to cover the estimated costs of the administration of this Act (other than costs associated with the Nominal Defendant scheme) for the financial year for which the levy is fixed together with any shortfall from previous financial years.

(4) The hospital and emergency services levy is to cover a reasonable proportion of the estimated cost of providing public hospital services and emergency services for the financial year for which the levy is fixed having regard to the number of people who—

- (a) are injured in motor vehicle accidents; and
- (b) make use of public hospital services and emergency services as a result of their injuries; and
- (c) are claimants or potential claimants under the statutory insurance scheme.

(5) The Nominal Defendant levy is to cover the estimated costs of the Nominal Defendant scheme for the financial year or other period for which the levy is fixed together with any shortfall from previous financial years.

(6) The administration fee is the fee payable to transport administration for work done in the administration of the statutory insurance scheme.

(7) The administration fee is a controlled receipt for the purposes of the *Financial Administration and Audit Act 1977*.

### **13 The insurer's premium**

(1) An insurer's premium is to be set by each licensed insurer, within limits fixed by the commission, for each class of insurance.

(2) The premiums are to relate to a period (an “**assessment period**”) fixed under a regulation.

(3) The insurer's premium is to be set by the insurer on the basis that the insurance is to cover a registration period of 1 year.

(4) If the registration period is more or less than 1 year, the insurer's premium for the relevant CTP policy is—

- (a) the proportion of the insurer's premium for 1 year that the period of registration bears to 1 year; and
- (b) an additional amount fixed on a basis prescribed under a regulation.

### **13A Premium rates**

(1) This section describes the process for setting the insurer's premiums for each assessment period.

(2) The commission first fixes limits of insurer's premium for each class of CTP insurance.

(3) The limits consist of a floor amount (below which the premium can not be set) and a ceiling amount (above which the premium can not be set).

(4) Before the commission fixes the limits, the commission must invite written submissions from—

- (a) licensed insurers on matters relevant to the fixing of the limits and, in particular, on—
  - (i) current factors and trends influencing the cost of insurance under the statutory insurance scheme; and
  - (ii) any other factors that should, in the opinion of the insurers, influence the permissible range of insurers' premiums for the assessment period; and
- (b) major organisations representing motorists in Queensland.

(5) The commission must at least once in each year obtain an actuarial analysis of the statutory insurance scheme and, at least once in each quarter, obtain an actuarial review of current trends that could affect the financial soundness of the scheme.

(6) After considering the financial soundness of the statutory insurance scheme in the light of the most recent actuarial analysis and quarterly review obtained under subsection (5), the submissions made in response to the commission's invitations and other material the commission considers relevant, the commission must—

- (a) fix the limits of insurer's premium for each class of CTP insurance; and
- (b) give each licensed insurer a written notice—
  - (i) stating the limits fixed for each class of CTP insurance; and



- (ii) requiring the insurer to submit its premiums for each class of CTP insurance for the relevant assessment period on or before a date stated in the notice; and
- (iii) specifying other requirements with which the insurer's submission must comply.

(7) The premiums must be submitted in accordance with requirements specified in the notice within a time limit fixed under a regulation.

(8) Each licensed insurer must give the commission written notice of the premiums set by the insurer on or before the date stated in the commission's notice.

(9) On receipt of the notice from the insurer, the commission must, within a time limit fixed by a regulation—

- (a) record the premiums set by the insurer for the relevant assessment period for each class of CTP insurance; and
- (b) give the insurer a written notice confirming the insurer's premiums for the relevant assessment period; and
- (c) notify transport administration of the premiums set by the insurer for the relevant assessment period.

(10) If a licensed insurer—

- (a) fails to submit premiums for each class of CTP insurance as required by the commission; or
- (b) sets a premium outside the limits allowed by the commission;

the commission may, by written notice to the insurer, withdraw the insurer's licence.

## **14 Recommendations about levies and administration fee**

(1) At least 4 months before the end of each financial year, the commission must make recommendations to the Minister on the amount of—

- (a) the statutory insurance scheme levy for the next financial year; and
- (b) the hospital and emergency services levy for the next financial year; and
- (c) the Nominal Defendant levy for the next financial year; and

(d) the administration fee for the next financial year.

(2) A levy or the administration fee may vary according to any 1 or more of the following factors—

- (a) the class of CTP insurance;
- (b) the period of insurance;
- (c) any other factor stated in a regulation.

(3) If there is an unexpected increase in the Nominal Defendant's liabilities that necessitates, in the commission's opinion, an increase in the Nominal Defendant levy before the end of a financial year for which the levy has been fixed, the commission may, at any time, recommend a special increase in the Nominal Defendant levy.

#### **14A Fixing levies and administration fee**

(1) The levies and administration fee are to be fixed under a regulation for each financial year.

(2) A regulation fixing levies and the administration fee for a particular financial year must be made at least 3 months before the beginning of the financial year.

(3) However—

- (a) if a regulation fixing the levies and administration fee for a particular financial year is not made at least 3 months before the beginning of the relevant financial year—
  - (i) the regulation commences 3 months after it is notified in the gazette or on a later date specified in the regulation; and
  - (ii) the levies and administration fee last fixed continue until the regulation commences; and
- (b) if the commission recommends a special increase in the Nominal Defendant levy, a regulation giving effect to the recommendation may be made at any time and comes into force on the date the regulation is notified in the gazette or a later date specified in the regulation.

## **15 Report and recommendations when costs of insurance exceed the affordability index**

(1) The costs of CTP insurance exceed the affordability index if the insurance premium for a CTP insurance policy for a class 1 motor vehicle (assuming the insurer's premium is set at the highest amount set by a licensed insurer) exceeds the affordability index.

(2) If the costs of CTP insurance exceed the affordability index, the commission must make a report to the Minister on the effect of current trends on the affordability of CTP insurance and, if the commission considers changes to the statutory insurance scheme are necessary to counter undesirable trends, may recommend the changes.

(3) However, in fixing the range within which an insurer's premium for a class 1 motor vehicle must fall, the commission is not to be influenced by the fact that the proposed range could result in the costs of CTP insurance exceeding the affordability index if the ceiling amount is, according to actuarial advice, appropriate to ensure the financial soundness of the scheme.

(4) The Minister must, as soon as practicable after receiving a report under subsection (2), cause a copy of the report to be laid before the Legislative Assembly.

(5) In this section—

“**class 1 motor vehicle**” means a motor vehicle of that class under a regulation.

### *Division 4—The Nominal Defendant*

## **16 The Nominal Defendant**

(1) The Nominal Defendant—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued under the name Nominal Defendant.

(2) The commissioner is the Nominal Defendant.

(3) The Nominal Defendant has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) employ staff (including temporary staff); and
- (d) appoint agents and attorneys; and
- (e) engage consultants.

(4) The Nominal Defendant may delegate powers under this Act.

(5) The Nominal Defendant's seal is to be kept as directed by the commissioner and may be used only as directed or authorised by the commissioner.

(6) Judicial notice must be taken of the imprint of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

### **16A Nominal Defendant is statutory body**

(1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the Nominal Defendant is a statutory body.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the Nominal Defendant's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### **17 Nominal Defendant to keep public office**

(1) The Nominal Defendant must have a public office.

(2) Legal process is served personally on the Nominal Defendant by leaving it at the Nominal Defendant's public office with a person apparently employed at the office.

### **18 Nominal Defendant taken to be licensed insurer**

The Nominal Defendant is taken to be a licensed insurer (other than for parts 3 and 5) and is bound by the industry deed.

***Division 5—Annual report*****19 Annual report**

(1) The commission must report annually under the *Financial Administration and Audit Act 1977*.

(2) The report must—

- (a) include a report dealing with all significant aspects of the operation of the statutory insurance scheme, with particular reference to the operation of the provisions affecting the management of motor vehicle accident claims; and
- (b) contain information about the cost to the community of motor vehicle accidents for the relevant financial year; and
- (c) contain information about the cost of administering this Act and the Nominal Defendant scheme for the financial year; and
- (d) contain further information that may be required by regulation; and
- (e) include the audited accounts of the Motor Accident Insurance Fund and the Nominal Defendant Fund.

**PART 3—COMPULSORY INSURANCE*****Division 1—Obligation to insure*****20 Offence of driving uninsured vehicle etc.**

(1) A person must not drive an uninsured motor vehicle on a road or in a public place.

Maximum penalty—80 penalty units.

(2) A person who is the owner of an uninsured motor vehicle must not permit someone else to drive it on a road or in a public place.

Maximum penalty—80 penalty units.

(3) It is a defence to a charge of an offence against this section to prove that the defendant had reasonable grounds to believe and did believe the motor vehicle was an insured motor vehicle.

(4) This section does not apply to a motor vehicle of a class exempted from its application by regulation.

(5) Also, this section does not apply to a motor vehicle to which a gratuitous CTP insurance policy under section 20A(2) relates.

### **20A Temporary gratuitous insurance**

(1) This section applies if a person has been issued a permit under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*, section 63, authorising the use of an unregistered motor vehicle on roads.

(2) A gratuitous CTP insurance policy in terms of the schedule under which the Nominal Defendant is the insurer is taken to be in force for the motor vehicle while the permit is in force.

(3) However, subsection (2) does not apply for any period when a CTP insurance policy is otherwise in force for the motor vehicle while the permit is in force.

### *Division 2—Selection of insurer*

## **21 Selection of insurer**

(1) On lodging an application for the registration of a motor vehicle with transport administration, the applicant must select a licensed insurer to be the insurer under the CTP insurance policy for the vehicle by exercising 1 of the following options—

- (a) the applicant may, at the time of lodging the application, nominate, in a way approved by transport administration, a particular licensed insurer to be the insurer under the CTP insurance policy for the vehicle and pay the appropriate insurance premium to transport administration;
- (b) the applicant may lodge with the application a certificate in a form approved by the commission certifying that the appropriate insurance premium has been paid to the licensed insurer on whose behalf the certificate is issued.

(2) The registered operator of a registered motor vehicle may, on lodging an application for renewal of registration or at any other time, change the insurer for the vehicle as from the end of the current registration period by nominating, in a way approved by transport administration, another licensed insurer as the insurer of the motor vehicle.

(3) However—

- (a) if a registered operator lodges an application for renewal of registration before the end of a current period of registration, a nomination to change the insurer for the period for which the renewal is to take effect can not be made after the time of lodging the application for renewal; and
- (b) a nomination under subsection (2) becomes void if, between the time it is lodged and the time it is to take effect—
  - (i) the registration of the motor vehicle is transferred; or
  - (ii) a further notice of nomination is lodged with transport administration under subsection (2).

(4) On lodging an application for renewal of the registration of a motor vehicle with transport administration, the applicant must—

- (a) pay the appropriate insurance premium to transport administration; or
- (b) lodge with transport administration a certificate in a form approved by the commission certifying that the appropriate insurance premium (for the period for which the registration is to be renewed) has been paid to the licensed insurer on whose behalf the certificate is issued.

(5) If an applicant for registration or renewal of registration of a motor vehicle pays to transport administration an amount that is (after subtracting any amount payable to transport administration by way of registration fees and charges) less than the appropriate insurance premium but within the tolerances set by the commission—

- (a) the applicant is taken to have paid the appropriate insurance premium; and
- (b) the amount is to be applied as follows—
  - (i) first to paying the registration fees and charges, the administration fee and the levies;
  - (ii) secondly to paying the remaining balance to the insurer.

(6) However, in a case to which subsection (5) applies, the CTP insurer may recover, as a debt, from the registered operator of the motor vehicle the difference between the insurer's premium the insurer would have received if the insurance premium had been paid in full and the amount actually received by the insurer.

(7) The commission may—

- (a) fix tolerances for subsection (5); or
- (b) change or replace tolerances previously fixed for subsection (5).

(8) When the commission fixes the tolerances (or changes or replaces tolerances previously fixed), the commission must give written notice of the tolerances (or the new tolerances) to transport administration and all licensed insurers.

(9) For this section—

- (a) a person is taken to have made a nomination in a way approved by transport administration if the nomination is communicated to transport administration in a way transport administration considers acceptable; and
- (b) a person is taken to have lodged a certificate with transport administration if the certificate or its contents are transmitted to, and received by, transport administration in a way transport administration considers acceptable.

(10) In this section—

**“appropriate insurance premium”** means the gross insurance premium calculated by reference to—

- (a) the period for which registration is to be granted or renewed; and
- (b) the class of motor vehicle; and
- (c) the insurer's premium fixed by the insurer last selected under this section for the relevant class of insurance.

## **22 Licensed insurer can not decline CTP business**

(1) A CTP insurance policy under this Act is binding on the licensed insurer by force of this Act, and a licensed insurer can not repudiate, or decline to issue or renew, a CTP insurance policy.

(2) If an application is made to a licensed insurer for an insurance certificate for use in connection with an application to register or renew the



registration of a motor vehicle, and the appropriate insurance premium is tendered to the insurer by the applicant, the insurer must issue the certificate.

Maximum penalty—300 penalty units.

(3) A court that convicts an insurer of an offence against subsection (2) may, by order, withdraw the licence.

### **23 Statutory policy of insurance**

(1) When transport administration registers or renews the registration of a motor vehicle—

- (a) a policy of insurance in terms of the schedule comes into force for the motor vehicle when the registration or renewal of registration takes effect; and
- (b) the licensed insurer selected under this part in or in relation to the relevant application is the insurer under the policy.

(2) The policy remains in force for the period of registration and for a further period of grace ending on the first of the following to happen—

- (a) on the renewal of the registration or the grant of a permit allowing the vehicle to be driven on roads while unregistered;
- (b) on the expiry of 30 days from the end of the period of registration.

(3) However—

- (a) if the registration is cancelled before the end of the period for which it was granted or renewed, the policy ceases to be in force when the cancellation takes effect (and there is no period of grace); and
- (b) if a cancellation of registration takes effect during the period of grace, the period of grace ends when the cancellation takes effect; and
- (c) the period of grace does not include a period for which the vehicle has plates attached to it that allow it to be driven while unregistered; and
- (d) if the registered operator of the motor vehicle has selected a licensed insurer to become the insurer of the motor vehicle as

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from the end of the period of registration, the selected insurer becomes the insurer under the policy for the period of grace.

**(3A)** If the registration of a motor vehicle is renewed after the end of the period of grace, the vehicle is uninsured from the end of the period of grace until the registration is renewed (even though the period for which the registration is renewed is backdated to the end of the previous registration period).

**(4)** The validity of the policy is unaffected by—

- (a) transport administration's failure to collect the insurance premium in full; or
- (b) another error of transport administration or an error of an insurer.

**(5)** If a CTP insurance policy comes into force under this Act and the insurance premium has not been collected, in full, by or for the insurer, the insurer may recover the premium, or as much of it as has not been paid, as a debt, from the person in whose name the motor vehicle is registered.

**(6)** If—

- (a) a cheque received by transport administration for the premium, or for an amount including the premium, on a CTP insurance policy is not paid on first presentation; or
- (b) transport administration becomes aware that, because of administrative error, the amount accepted by it as the premium on a CTP insurance policy is not the full amount of the premium;

transport administration must, as soon as practicable, inform the insurer of the relevant fact and of any action taken by transport administration to recover the premium or the balance of the premium.

**(7)** If provision is made by regulation for the gratuitous insurance of vehicles of a particular class under policies of CTP insurance, a vehicle of the relevant class must be regarded, subject to any conditions and limitations prescribed by regulation, as insured by a CTP insurance policy under which the Nominal Defendant is the insurer.

**(8)** If a licensed insurer issues a CTP insurance certificate for an uninsured motor vehicle, the motor vehicle is covered by the insurer under a CTP insurance policy while the vehicle is being driven as far as is reasonably necessary—

- (a) to obtain a certificate of roadworthiness, or a weighbridge certificate, necessary for the vehicle's registration; or

- (b) to take the vehicle to the nearest convenient place for an inspection that is necessary for registration.

(9) However, CTP insurance cover under subsection (8) does not extend to an unregistered vehicle while it is being driven to a place to arrange or undergo repair or another purpose not specifically authorised by the subsection.

## **24 Transfer of registration**

A CTP insurance policy is unaffected by a change of ownership, or a transfer of the registration of, a motor vehicle to which it relates.

## **25 Motor vehicle must be insured under correct class**

(1) An applicant for registration, or renewal of registration, of a motor vehicle must not make a misstatement or misrepresentation that results in—

- (a) the motor vehicle being incorrectly classified; and  
(b) a consequent reduction in the amount of the premium charged for the CTP insurance policy for the vehicle.

Maximum penalty—30 penalty units.

(2) However, it is a defence to a charge of an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the misstatement or misrepresentation was true.

(2A) A person must not drive a motor vehicle, or permit a motor vehicle to be driven, on a road or in a public place knowing that the vehicle has been incorrectly classified and that, as a result, less than the appropriate insurance premium has been paid for a policy of CTP insurance.

Maximum penalty—30 penalty units.

(3) An insurer must not fix the insurance premium to be paid for a CTP insurance policy on the basis of a classification of a motor vehicle the insurer knows to be incorrect.

Maximum penalty—300 penalty units.

## **26 Non application in certain cases**

This division does not apply to—

- (a) a trailer other than a trailer that is registered, or about to be registered, under the *Interstate Road Transport Act 1985* (Cwlth); or
- (b) a motor vehicle owned by a self-insurer.

### ***Division 3—Disbursement of gross insurance premiums***

## **27 Disbursement of gross premiums by transport administration**

(1) Transport administration must in each week—

- (a) give the commission a return setting out, for the previous week—
  - (i) the total amount received by way of insurance premiums; and
  - (ii) the total amount received by way of insurer's premium for each licensed insurer; and
  - (iii) the amount received by way of statutory insurance scheme levy; and
  - (iv) the amount received by way of hospital and emergency services levy; and
  - (v) the amount received by way of Nominal Defendant levy; and
  - (vi) the amount received by way of administration fee; and
- (b) pay to each licensed insurer the total amount received by way of insurer's premium for the licensed insurer; and
- (c) pay to the commission the total amount received by way of levies (including amounts received from licensed insurers for transmission to the commission).

(2) Transport administration may retain the amount received by way of administration fee.

## **27A Disbursement of gross premiums by insurers who receive premiums directly**

(1) Within a week after transport administration notifies a licensed insurer that it has received a certificate certifying payment of an insurance premium to the licensed insurer, the licensed insurer must—

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- (a) pay to transport administration (for transmission to the commission) the component of the insurance premium consisting of the levies; and
- (b) pay to transport administration the component of the insurance premium consisting of the administration fee.

Maximum penalty—150 penalty units.

(2) However, an insurer's liability to make payments under subsection (1) to transport administration, and transport administration's liability to pay insurer's premiums to the insurer, may be set off against each other under an arrangement between transport administration and the insurer (but such an arrangement is not to affect the extent of transport administration's liability to pay levies to the commission).

(3) If an insurer fails to make a payment to transport administration when required under this section, transport administration may recover the amount as a debt, together with interest at a rate fixed under a regulation.

*Division 4—The statutory funds***28 Motor Accident Insurance Fund**

(1) There is to be a fund called the Motor Accident Insurance Fund.

(2) The fund consists of—

- (a) an amount transferred to the fund under section 33(6) or 106;<sup>4</sup> and
- (b) the amounts received or recovered by the commission by way of the statutory insurance scheme levy under this Act; and
- (c) the amounts received or recovered by the commission by way of the hospital and emergency services levy under this Act; and
- (d) any penalties or penalty interest imposed under this Act; and
- (e) income derived from the investment of the fund.

(3) The fund is to be applied to meet the cost of administering this Act, including—

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<sup>4</sup> Section 33 (Nominal Defendant as the insurer) or 106 (Nominal Defendant)

- (a) all expenditure by the commission in the exercise of statutory powers and functions (including payments to be made under section 106(4) but not costs otherwise associated with the Nominal Defendant scheme); and
- (b) payments relating to an advance of amounts under subsection (6), that are payable under the terms of the advance.

(4) The amounts received into the fund by way of the hospital and emergency services levy are to be applied towards providing public hospital services and public emergency services and, for that purpose, are to be paid to relevant departments.

(5) The Treasurer may decide at which periodic intervals, and in what proportions, the amounts are to be paid.

(6) The Treasurer may advance amounts to the fund on the terms the Treasurer considers appropriate.

## **29 Nominal Defendant Fund**

(1) There is to be a fund called the Nominal Defendant Fund.

(2) The following amounts are to be paid into the fund—

- (a) the amounts to be paid by the Treasurer to the credit of the fund under section 106;
- (b) the income derived from the Nominal Defendant levy;
- (c) the amounts paid to, or recovered by, the Nominal Defendant under this Act;
- (d) amounts advanced to the fund under this section;
- (e) income derived from investment of the fund.

(3) The following amounts are to be paid from the fund—

- (a) the costs of carrying out the functions of the Nominal Defendant under the statutory insurance scheme;
- (b) amounts required to satisfy liabilities of the Nominal Defendant for motor vehicle accident claims;
- (c) payments relating to an advance of amounts under subsection (4), that are payable under the terms of the advance.

(4) The Treasurer may advance amounts to the fund on the terms the Treasurer considers appropriate.

*Division 5—Transfer of CTP business***30 Transfer of CTP business**

(1) The commission may, on the joint application of 2 licensed insurers, approve the transfer of CTP business from one insurer (the “**transferor**”) to the other (the “**transferee**”).

(2) An approval under this section may be given on the conditions the commission considers appropriate.

(3) Notice of an approval under this section must be published in the gazette.

(4) On publication of the notice of approval in the gazette—

- (a) all rights and liabilities subject to the transfer are transferred to, and become rights and liabilities of, the transferee; and
- (b) this Act operates as if the transferee had been selected as the insurer under the CTP policies subject to the transfer; and
- (c) if the transferor’s entire CTP business is transferred—the transferor’s licence is withdrawn; and
- (d) if part of the transferor’s CTP business is transferred—the transfer is an adequate reason for withdrawing the licence.<sup>5</sup>

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5 It should be noted that, under section 66(1), the commission may withdraw a licence if the insurer asks the commission to withdraw it, the insurer contravenes this Act, a condition of the licence or the industry deed, or there is some other reason justifying withdrawal of the licence.

## **PART 4—CLAIMS**

### *Division 1—The insurer*

#### **31 Principles for determining the insurer**

(1) If personal injury is caused by, through or in connection with a motor vehicle, the insurer for the statutory insurance scheme is to be decided in accordance with the following principles—

- (a) if the motor vehicle is an insured motor vehicle—the insurer under the CTP insurance policy is, subject to this division, the insurer;
- (b) if the motor vehicle is not insured but a self-insurer is the registered owner—the self-insurer is the insurer;
- (c) if the motor vehicle is not insured and a self-insurer is not the registered owner—the Nominal Defendant is the insurer;
- (d) if the motor vehicle, or insurer under its CTP insurance policy, can not be identified—the Nominal Defendant is the insurer.

(2) In any legal proceedings, it is to be presumed that a motor vehicle can not be identified if it is established by affidavit or oral evidence that proper inquiry and search have been made and have failed to establish the identity of the motor vehicle.

(3) If a trailer is attached to a motor vehicle registered in Queensland or runs out of control after becoming accidentally detached from a motor vehicle registered in Queensland, the trailer must be regarded as part of the motor vehicle and the insurer of the motor vehicle is the insurer of the trailer but, in any other case, the insurer of a trailer registered in Queensland is the Nominal Defendant whose liability is to be decided as if the Nominal Defendant had issued a separate CTP insurance policy for the trailer.

(4) However—

- (a) if a motor vehicle accident involving a trailer with a GVM of more than 4.5 tonnes happens outside the State—the Nominal Defendant is not the insurer of the trailer under subsection (3); and



- (b) if a CTP insurance policy (other than a supplementary policy) is issued for, or expressly extends to, a trailer—the insurer under the policy is the insurer of the trailer for all purposes.

(5) In this section—

**“supplementary policy”** means a policy of insurance for a trailer insuring against liability for personal injury caused by, through or in connection with the trailer, other than a liability covered under subsection (3).

### **32 Self-insurer as the insurer**

If personal injury is caused by, through or in connection with a motor vehicle that is not insured under a CTP insurance policy but a self-insurer is the registered owner, the self-insurer’s liability is the same as if the self-insurer had been, when the motor vehicle accident happened, the insurer under a CTP insurance policy under this Act for the motor vehicle.

### **33 Nominal Defendant as the insurer**

(1) The Nominal Defendant’s liability for personal injury caused by, through or in connection with a motor vehicle is the same as if the Nominal Defendant had been, when the motor vehicle accident happened, the insurer under a CTP insurance policy under this Act for the motor vehicle.

(2) If the insurer under a CTP insurance policy becomes insolvent, the Nominal Defendant becomes the insurer under CTP policies in force under this Act for which the insolvent insurer was formerly the insurer unless the policies are transferred to some other licensed insurer.

(3) The Nominal Defendant is liable for personal injury arising out of a motor vehicle accident outside Queensland only if the liability arises under subsection (2).

(4) Subject to subsection (5), if the Nominal Defendant Fund proves insufficient to meet the liabilities of the Nominal Defendant under subsection (2), the commissioner must make payments from the Motor Accident Insurance Fund to meet the deficiency.

(5) The total payments from the Motor Accident Insurance Fund under subsection (4) and under section 106(4), including payments made under section 106(4) before the commencement of this subsection, can not be more than the amount that was transferred to the fund under section 106(3).

(6) If an amount is recovered or received by the Nominal Defendant, by way of an action or a claim relating to the insolvency of an insurer under a CTP insurance policy,<sup>6</sup> the Treasurer may, by written notice to the Nominal Defendant, direct it to transfer an amount, not exceeding the amount recovered or received, to the Motor Accident Insurance Fund.

(7) However, the total amount the Treasurer may direct the Nominal Defendant to transfer to the Motor Accident Insurance Fund from all the amounts recovered or received relating to an insolvent insurer, as mentioned in subsection (6), must not exceed the total payments from the fund made by the commissioner under subsection (4) relating to that insolvent insurer.

### *Division 2—Duty to notify accidents and claims and provide information*

#### **34 Duty to notify accidents to police**

(1) A person who proposes to make a motor vehicle accident claim (including a person acting in a representative capacity) must ensure that appropriate notice of the accident has been given to a police officer.

(2) Appropriate notice of a motor vehicle accident is—

- (a) the report of particulars required under the *Transport Operations (Road Use Management—Road Rules) Regulation 1999*, section 287;<sup>7</sup> or
- (b) if (and only if) particulars have not been reported as required under that section—a notice under this section in a form approved by the commission.

(3) A notice under this section must—

- (a) state the intending claimant's full name, date of birth, residential address and a telephone number at which the claimant can be contacted; and
- (b) state the date, time and place of the accident and describe how it happened; and

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<sup>6</sup> See section 61 (Nominal Defendant's rights of recourse against insurer).

<sup>7</sup> *Transport Operations (Road Use Management—Road Rules) Regulation 1999*, section 287 (Duties of a driver involved in a crash)

- (c) identify all motor vehicles and drivers involved in the accident (as far as known to the intending claimant); and
- (d) state the names and residential addresses of all persons injured in the accident (as far as known to the intending claimant); and
- (e) state the names and residential addresses of all persons who witnessed the accident (as far as known to the intending claimant); and
- (f) state the general nature of the personal injury to the intending claimant.

### **35 Duty to provide information**

(1) The driver, person in charge or owner of a motor vehicle involved in an accident out of which personal injury arises must, at the request of the insurer of a vehicle involved in the accident, provide any information about the accident that the insurer may reasonably require within 1 month after receiving the request.

(2) A person must not, without reasonable excuse, fail to comply with a request for information under subsection (1).

Maximum penalty—10 penalty units.

(3) A person asked to provide information under subsection (1) has a reasonable excuse for not complying with the request if the information would tend to incriminate the person.

(4) A person, if not the driver, owner, or person in charge of the motor vehicle insured by the insurer asking for information, need not comply with the request unless it was made with the agreement of the insurer of the motor vehicle.

(5) An insurer who asks for information under this section must disclose fully in the request the nature of the insurer's interest in the motor vehicle accident.

### **36 Duty to notify claims**

(1) A person who receives a claim or demand, or notice of a claim or demand, about personal injury arising out of a motor vehicle accident must, within 1 month after receiving it, give the claim, demand or notice to the insurer of the motor vehicle under the statutory insurance scheme.

Maximum penalty—10 penalty units.

(2) A person who receives a writ or other process of a court about a motor vehicle accident claim must immediately give it to the insurer of the motor vehicle under the statutory insurance scheme.

Maximum penalty—10 penalty units.

### *Division 3—Claims procedures*

#### **37 Notice of accident claim**

(1) Before bringing an action in a court for damages for personal injury arising out of a motor vehicle accident, a claimant must give written notice of the motor vehicle accident claim to the insurer or 1 of the insurers, against which the action is to be brought—

- (a) containing a statement of the information required under a regulation; and
- (b) authorising the insurer to have access to records and sources of information relevant to the claim specified under a regulation; and
- (c) accompanied by the documents required under a regulation.

(2) The notice must be given—

- (a) if it is to be given to the Nominal Defendant because the motor vehicle can not be identified—within 3 months after the motor vehicle accident; or
- (b) in any other case—within the period ending on the earlier of the following dates—
  - (i) 9 months after the motor vehicle accident or, if symptoms of the injury are not immediately apparent, the first appearance of symptoms of the injury;
  - (ii) 1 month after the claimant first consults a lawyer about the possibility of making a claim.

(3) If notice of a motor vehicle accident claim is not given within the time fixed by this section, the obligation to give the notice continues and a reasonable excuse for the delay must be given in the notice or by separate notice to the insurer but, if a motor vehicle can not be identified and the

notice is not given to the Nominal Defendant within 9 months after the motor vehicle accident, the claim against the Nominal Defendant is barred.

(4) If 2 or more motor vehicles were involved in the motor vehicle accident, the insurer to which notice is given under subsection (1) must, within 7 days after receiving it, give a copy of the notice to any other insurer of a motor vehicle involved in the motor vehicle accident.

### **37A Additional information form**

(1) An insurer to whom notice of a motor vehicle accident claim is given may ask the claimant to provide additional information about the claim and the circumstances out of which it arises.

(2) The information must be provided in a form approved by the commission (an “**additional information form**”) to be completed and returned to the insurer.

(3) The claimant must complete and return an additional information form to the insurer—

- (a) if the claim relates to a motor vehicle that can not be identified and the request is made by the Nominal Defendant—within the period ending on the later of the following dates—
  - (i) 3 months after the motor vehicle accident;
  - (ii) 1 month after the date of the request; or
- (b) in any other case—within the period ending on the later of the following dates—
  - (i) 9 months after the motor vehicle accident or, if symptoms of the injury are not immediately apparent, the first appearance of symptoms of the injury;
  - (ii) 1 month after the date of the request.

### **38 Multiple insurers**

(1) If 2 or more motor vehicles are involved in a motor vehicle accident in circumstances in which 2 or more insurers may be liable on a motor vehicle accident claim arising out of the accident, 1 of the insurers (the “**claim manager**”) is to act for all the insurers under this division and divisions 4, 5 and 6.

(2) The claim manager is to be decided by agreement between the insurers within 2 months of the day when notice of the claim was first given under this division or, if agreement is not reached within the period, the claim manager is to be decided under the industry deed.

(3) Until it is decided under subsection (2) who the claim manager is to be, the insurer to which notice of claim is first given under this division is the claim manager.

(4) The claim manager—

- (a) may exercise the powers and perform the functions conferred by this division and divisions 4, 5 and 6 in relation to the claim and the claimant for all insurers liable, or potentially liable, on the claim; and
- (b) must act as far as practicable with the agreement of the other insurers; and
- (c) is entitled to contributions from the other insurers on the basis prescribed by the industry deed for expenditure properly incurred as claim manager, and for amounts awarded or paid out on the claim.

(5) The claim manager and the other insurers must cooperate with each other and must provide each other with information in their possession relevant to the claim.

(6) If the Nominal Defendant is 1 of 2 or more insurers who may be liable on a motor vehicle accident claim because a motor vehicle that can not be identified was involved in the accident, another insurer may act for the Nominal Defendant under this section only if the Nominal Defendant agrees in writing.

### **39 Response to the notice of claim**

(1) If notice of a motor vehicle accident claim is given to an insurer under this division or purportedly under this division—

- (a) the insurer must, within 14 days after receiving the notice give the claimant written notice—
  - (i) stating whether the insurer is satisfied that the notice has been given as required under this division; and

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- (ii) if the insurer is not satisfied—identifying the noncompliance and stating whether the insurer waives compliance with the requirements; and
  - (iii) if the insurer does not waive compliance with the requirements—allowing the claimant a reasonable period (at least 1 month) specified in the notice either to satisfy the insurer that the claimant has in fact complied with the requirements or to take reasonable action specified in the notice to remedy the noncompliance; and
  - (iv) stating whether the insurer is prepared (without admitting liability) to meet the reasonable and appropriate cost of the claimant’s rehabilitation; and
- (b) if the insurer is not prepared to waive compliance with the requirements in the first instance—the insurer must, within 14 days after the end of the period specified under paragraph (a)(iii), give the claimant a written notice—
- (i) stating that the insurer is satisfied the claimant has complied with the relevant requirements, is satisfied with the action taken by the claimant to remedy the noncompliance or waives the noncompliance in any event; or
  - (ii) stating that the insurer is not satisfied that the claimant has taken reasonable action to remedy the noncompliance, giving full particulars of the noncompliance and the claimant’s failure to remedy it.

(2) If an insurer to which notice of a motor vehicle accident claim is given under this division or purportedly under this division is not, for the purposes of the claim the insurer of the motor vehicle to which the claim relates under the statutory insurance scheme, the insurer must, instead of responding to the notice under subsection (1), give the claimant written notice denying that the insurer is the insurer under the statutory insurance scheme.

(3) If notice of a motor vehicle accident claim is given to an insurer under this division or purportedly under this division, and the insurer does not respond to the notice within 14 days after receiving it, the insurer is conclusively presumed to be satisfied the notice was given as required under this division.

(4) However, the insurer’s failure to respond to the notice does not prevent the insurer from later denying that the insurer is the insurer of the

motor vehicle to which the claim relates under the statutory insurance scheme, but the insurer is liable to compensate the claimant and the insurer against which the claim properly lies for prejudice resulting from the insurer's failure to respond to the notice under subsection (2).

(5) A claimant's failure to give notice of a motor vehicle accident claim as required under this division prevents the claimant from proceeding further with the claim unless—

- (a) the insurer—
  - (i) has stated that the insurer is satisfied notice has been given as required under this division or the claimant has taken reasonable action to remedy the noncompliance; or
  - (ii) is presumed to be satisfied notice has been given as required under this division; or
- (b) the insurer has waived compliance with the requirement; or
- (c) the court, on application by the claimant—
  - (i) declares that the claimant has remedied the noncompliance; or
  - (ii) authorises further proceedings based on the claim despite the noncompliance.

(6) An order of the court under subsection (5)(c) may be made on conditions the court considers necessary or appropriate to minimise prejudice to an insurer from the claimant's failure to comply with requirements of this division.

(7) If a claimant does not comply with the requirements of this division, a court before which the claimant brings an action for damages on the claim—

- (a) may, on the insurer's application, award in the insurer's favour costs (including legal and investigation costs) reasonably incurred by the insurer because of the claimant's default; and
- (b) may only award interest in the claimant's favour for a period for which the claimant was in default if the court is satisfied there is a reasonable excuse for the default.

(8) If a claim against the Nominal Defendant is barred because the claim relates to personal injury caused by, through or in connection with a motor vehicle that can not be identified and the claimant failed to give notice of claim under this division within 9 months after the motor vehicle accident,



the Nominal Defendant can not waive compliance with the requirement to give notice within the time allowed by this division, nor can the court give leave to bring a proceeding in a court despite the noncompliance.

#### **40 Minority and legal disabilities**

(1) A claimant's obligation to comply with this division is suspended during the claimant's minority or a period of legal incapacity.

(2) A period within which the obligation is to be complied with begins when the claimant's minority or legal incapacity ends.

(3) However, this section does not prevent a claimant, or a person acting for the claimant, from complying with an obligation under this division during the claimant's minority or legal incapacity.

#### **41 Insurer must attempt to resolve claim**

(1) Within 6 months after an insurer receives notice of a motor vehicle accident claim under this division, the insurer must—

- (a) take reasonable steps to inform itself of the circumstances of the motor vehicle accident out of which the claim arises; and
- (b) give the claimant written notice stating—
  - (i) whether liability is admitted or denied; and
  - (ii) if contributory negligence is claimed—the degree of the contributory negligence expressed as a percentage; and
- (c) if the claimant made an offer of settlement in the notice of claim, inform the claimant whether the insurer accepts or rejects the offer or, if the claimant did not make an offer of settlement in the notice, invite the claimant to make a written offer of settlement.

(2) As soon as practicable after an insurer receives notice of a claim under the division, the insurer must—

- (a) make a fair and reasonable estimate of the damages to which the claimant would be entitled in an action against the insurer; and
- (b) make a written offer (or counteroffer) of settlement to the claimant setting out in detail the basis on which the offer is made, or settle the claim by accepting an offer made by the claimant.

(3) If a notice of claim is not given as required under this division, the insurer is taken to receive the notice when—

- (a) the insurer gives the claimant notice that the insurer waives compliance with the requirement that has not been complied with or is satisfied the claimant has taken reasonable action to remedy the noncompliance; or
- (b) the court makes a declaration that the claimant is taken to have remedied the noncompliance, or gives leave to bring a proceeding based on the claim despite the noncompliance.

(4) An offer (or counteroffer) of settlement must be accompanied by a copy of medical reports, assessments of cognitive, functional or vocational capacity, or other material in the offerer's possession that may help the person to whom the offer is made make a proper assessment of the offer.

(5) An insurer or claimant to whom a written offer (or counteroffer) of settlement is made must (unless a response to the offer is to be made under subsection (1)(c)) respond in writing to the offer, within 3 months after receiving it, indicating acceptance or rejection of the offer.

(6) An admission of liability by an insurer under this section—

- (a) is not binding on the insurer on another claim arising out of the same motor vehicle accident; and
- (b) is not binding on the insurer at all if it later appears the admission was induced by fraud.

## **42 Payment of medical expenses etc.**

(1) Once liability has been admitted, it is the duty of the insurer to make payments to or for the claimant for private hospital, medical and pharmaceutical expenses reasonably and appropriately incurred because of the injury or a proportionate part of the expenses reflecting the extent of the insurer's responsibility (assuming the claimant to be guilty of contributory negligence as asserted by the insurer).

(2) A payment must be made under this section on presentation of an account made up, and verified, as required by regulation.

(3) An insurer may recover payments made under this section if it later appears that the admission of liability was induced by fraud.

**43 Insured person not to admit liability**

(1) An insured person must not, without the insurer's written agreement—

- (a) make an admission of liability on a motor vehicle accident claim; or
- (b) settle, or offer to settle, a motor vehicle accident claim; or
- (c) make a payment, or offer or promise to make a payment, on a motor vehicle accident claim.

(2) A contract, offer or promise made in contravention of this section does not bind the insurer.

(3) This section does not prevent an insured person from providing a police officer with information reasonably required to prepare a report on a motor vehicle accident.

(4) An insured person incurs no civil liability to an insurer through contravention of this section.

**44 Power of insurer to act for insured**

(1) If a motor vehicle accident claim is made against an insured person, the insurer—

- (a) must undertake the conduct and control of negotiations and legal proceedings related to the claim; and
- (b) may compromise or settle the claim or legal proceedings related to the claim and act for the insured person in any other way in relation to the 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 can not be found, the insurer may sign for the insured person.

(3) Nothing said or done by an insurer in connection with a motor vehicle accident claim, or legal proceedings related to a motor vehicle accident claim, is an admission of liability in, or otherwise prejudices or affects, another claim or proceedings arising out of the same circumstances.

***Division 4—Cooperation between claimant and insurer*****45 Duty of claimant to cooperate with insurer**

(1) A claimant must cooperate with the insurer and, in particular—

- (a) must provide the insurer with copies of reports and other documentary material (including written statements made by the claimant or by witnesses) in the claimant's possession about the circumstances of the accident or the claimant's medical condition or prospects of rehabilitation; and
- (b) must give information reasonably requested by the insurer about—
  - (i) the circumstances of the accident out of which the claim arose; and
  - (ii) the nature of the injuries resulting from the accident and of any consequent disabilities and financial loss; and
  - (iii) if applicable—the medical treatment and rehabilitation services the claimant has sought or obtained; and
  - (iv) the claimant's medical history (as far as it is relevant to the claim), and any other claims for compensation for personal injury made by the claimant.

(2) The claimant must—

- (a) provide the copies of reports and other documentary materials within 1 month after giving notice of the motor vehicle accident claim or, if the reports or material come into the claimant's possession later, within 1 month after they come into the claimant's possession; and
- (b) respond to a request under subsection (1)(b) within 1 month after receiving it.

(3) If, after notice of a claim is given to the insurer but before the claim is resolved, the claimant becomes aware of a significant change in the claimant's medical condition, or in other circumstances, relevant to the extent of the claimant's disabilities or financial loss, the claimant must, within 1 month after becoming aware of the change, inform the insurer of the change.

(7) Any information provided by a claimant under this section must be verified by statutory declaration if the insurer requires it to be verified by statutory declaration.

#### **45A Panels of recognised medical experts**

(1) The commission—

- (a) may establish a panel of experts for reporting on the medical condition of claimants and their prospects of rehabilitation (the “**official panel of medical experts**”); and
- (b) may revise the membership of the panel from time to time by adding to, or removing, the names of the experts who constitute the panel.

(2) In deciding on the composition of the panel, the commission—

- (a) must consult with the professional bodies with which consultation is required under a regulation; and
- (b) may only include an expert on the panel if—
  - (i) the expert’s inclusion is endorsed by the relevant professional bodies; or
  - (ii) the commission is satisfied there is good reason for inclusion of the expert on the panel despite the absence of endorsement by the relevant professional bodies.

#### **46 Claimant and insurer may jointly arrange for expert report**

(1) An insurer and a claimant (or intending claimant) may jointly arrange for an expert report on—

- (a) the motor vehicle accident; or
- (b) the claimant’s medical condition or prospects of rehabilitation.

(2) Neither an insurer nor a claimant is under any obligation to agree to a proposal to obtain a report under this section.

(3) The person by whom an expert report is obtained is to be a person, agreed to by both parties, with appropriate qualifications and experience in the relevant field.

(4) The person by whom an expert report is prepared under this section must provide both parties with a copy of the report.

**46A Examination of claimant by medical expert in absence of agreement between the parties**

(1) This section applies if the insurer wants to obtain an expert report on the claimant's medical condition or prospects of rehabilitation but fails to obtain the claimant's agreement.

(2) The claimant must comply with a request by the insurer to undergo, at the insurer's expense—

- (a) a medical examination by a doctor to be selected by the claimant from a panel of at least 3 doctors nominated in the request; or
- (b) an assessment of cognitive, functional or vocational capacity by an expert to be selected by the claimant from a panel of at least 3 experts with appropriate qualifications and experience nominated by the insurer in the request.

(3) However, a claimant is not obliged to undergo an examination under this section if it is unreasonable or unnecessarily repetitious.

(4) A panel of doctors or other experts nominated under subsection (2) may (but need not) include doctors or other experts from the official panel of medical experts.

(5) If 3 doctors or experts with appropriate qualifications and experience are not available for inclusion on a panel under subsection (2), the number on the panel may be reduced to 2.

**46B Costs of obtaining expert reports where reports obtained by agreement**

(1) If an expert report is obtained by agreement between the claimant and the insurer, and the claimant is liable for the cost of obtaining the report, the insurer must, at the claimant's request, reimburse the claimant for the reasonable cost of obtaining the report.

(2) However, a claimant's right to reimbursement under this section is subject to the terms of any agreement between the claimant and the insurer.

(3) If the insurer is entitled to costs, the costs may (subject to the rules on which costs are to be awarded) include the cost of reimbursing the claimant for the cost of obtaining an expert report or expert reports under this section.

**47 Duty of insurer to cooperate with claimant**

(1) The insurer must cooperate with a claimant and, in particular—

- (a) must provide the claimant with copies of reports and other documentary material in the insurer's possession about the circumstances of the accident or the claimant's medical condition or prospects of rehabilitation; and
- (b) must, at the claimant's request, give the claimant information that is in the insurer's possession, or can be found out from the insured person, about the circumstances of, or the reasons for, the accident.

(2) The insurer must—

- (a) provide the claimant with copies of reports and other documentary materials within 1 month after receiving the notice of claim under division 3 or, if the reports or materials come into the insurer's possession later, within 1 month after they come into the insurer's possession; and
- (b) respond to a request under subsection (1)(b) within 1 month after receiving it.

(3) If the claimant requires information provided by an insurer under this section to be verified by statutory declaration, the information must be verified by statutory declaration.

(4) If an insurer fails, without proper reason, to comply fully with a request under this section, the insurer is liable for costs to the claimant resulting from the failure.

**48 Nondisclosure of certain material**

(1) A claimant or insurer is not obliged to disclose information or documentary material under this division if the information or documentary material is protected by legal professional privilege.

(2) However, investigative reports, medical reports and reports relevant to the claimant's rehabilitation must be disclosed even though protected by legal professional privilege but they may be disclosed with the omission of passages consisting only of statements of opinion.

(3) If an insurer has reasonable grounds to suspect a claimant of fraud, the insurer may withhold from disclosure under this division information or documentary material (including reports that would, apart from this

subsection, have to be disclosed under subsection (2)) to the extent the disclosure would alert the claimant to the discovery of the grounds of suspicion or could help in the furtherance of fraud.

(4) An insurer must not withhold information or documentary material from disclosure under this division without having proper grounds.

Maximum penalty for subsection (4)—50 penalty units.

## **49 Privilege**

The information and documentary material disclosed under this division are protected by the same privileges as if disclosed in a proceeding before the Supreme Court.

### *Division 4A—Enforcement of divisions 2, 3 and 4*

## **50 Court's power to enforce compliance with divs 2, 3 and 4**

(1) If a claimant fails to comply with a duty imposed under division 2, 3 or 4, the court may, on the insurer's application, order the claimant to take specified action to remedy the default within a time specified by the court.

(2) If an insurer fails to comply with a duty imposed under division 3 or 4, the court may, on the claimant's application, order the insurer to take specified action to remedy the default within a time specified by the court.

(3) The court may make consequential or ancillary orders.

### *Division 5—Rehabilitation*

## **51 Obligation to provide rehabilitation services**

(1) An insurer may make rehabilitation services available to a claimant on the insurer's own initiative or at the claimant's request.

(2) An insurer that makes rehabilitation services available to a claimant before admitting or denying liability on the claim must not be taken, for that reason, to have admitted liability.

(3) Once liability has been admitted on a claim, or the insurer has agreed to fund rehabilitation services without making an admission of liability, the



insurer must, at the claimant's request, ensure that reasonable and appropriate rehabilitation services are made available to the claimant.

**(4)** If the insurer intends to ask the court to take the cost of rehabilitation services into account in the assessment of damages, the insurer must, before providing the rehabilitation services, give the claimant a written estimate of the cost of the rehabilitation services and a statement explaining how, and to what extent, the assessment of damages is likely to be affected by the provision of the rehabilitation services.

**(5)** The claimant may, if not satisfied that the rehabilitation services made available under this section are reasonable and appropriate—

- (a) apply to the commission to appoint a mediator to help resolve the questions between the claimant and the insurer; or
- (b) apply to the court to decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate.

**(5A)** An application for appointment of a mediator under subsection (5)(a) must—

- (a) be made in writing; and
- (b) give details of any attempts made by the applicant to resolve the matter in dispute.

**(5B)** The fees and expenses of a mediator appointed under subsection (5)(a) are to be paid as agreed between the parties or, in the absence of agreement, by the parties in equal proportions.

**(5C)** An application may be made to the court under subsection (5)(b) whether or not there has been an earlier attempt to resolve the questions between the claimant and the insurer by mediation.

**(5D)** On an application under subsection (5)(b), the court may decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate and make consequential orders and directions.

**(6)** The insurer must bear (or reimburse) the cost of providing rehabilitation services under this section unless the insurer's liability is reduced—

- (a) by agreement with the claimant; or
- (b) by order of the court under subsection (8).

**(7)** The insurer may, if of the opinion that the cost of rehabilitation services is unreasonable—

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- (a) apply to the commission to appoint a mediator to help resolve the questions between the claimant and the insurer; or
- (b) apply to the court to decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate or to decide to what extent the insurer should contribute to the cost of rehabilitation services.

**(7A)** An application for appointment of a mediator under subsection (7)(a) must—

- (a) be made in writing; and
- (b) give details of any attempts made by the applicant to resolve the matter in dispute.

**(7B)** The fees and expenses of a mediator appointed under subsection (7)(a) are to be paid as agreed between the parties or, in the absence of agreement, by the parties in equal proportions.

**(7C)** An application may be made to the court under subsection (7)(b) whether or not there has been an earlier attempt to resolve the questions between the insurer and the claimant by mediation.

**(8)** On an application under subsection (7)(b), the court may decide the questions raised on the application and make consequential orders and directions.

**(9)** The cost to the insurer of providing rehabilitation services under this section is to be taken into account in the assessment of damages on the claim if (and only if) the insurer gave a statement to the claimant, as required under subsection (4), explaining how and to what extent the assessment of damages was likely to be affected by the provision of the rehabilitation services.

**(9A)** If the cost of rehabilitation services is to be taken into account in the assessment of damages, the cost is taken into account as follows—

- (a) the claimant's damages are first assessed (without reduction for contributory negligence) on the assumption that the claimant has incurred the cost of the rehabilitation services as a result of the injury suffered in the accident;
- (b) any reduction to be made on account of contributory negligence is then made;
- (c) the total cost of rehabilitation services is then set-off against the amount assessed.

*Example—*

Suppose that responsibility for a motor vehicle accident is apportioned equally between the claimant and the insurer. Damages (exclusive of the cost of rehabilitation) before apportionment are fixed at \$20 000. The insurer has spent \$5 000 on rehabilitation services. In this case, the claimant's damages will be assessed under paragraph (a) at \$25 000 (that is, as if the claimant had incurred the \$5 000 rehabilitation expense) and reduced to \$12 500 under paragraph (b), and the \$5 000 spent by the insurer on rehabilitation will be set off against this amount, resulting in a final award of \$7 500.

(10) An insurer who is induced by a claimant's fraud to provide rehabilitation services for the claimant may recover the cost to the insurer of providing the services, as a debt, from the claimant.

*Division 5A—Compulsory conference***51A Compulsory conference**

(1) Before the claimant brings an action in a court for damages for personal injury arising out of a motor vehicle accident, there must be a conference of the parties (the “**compulsory conference**”).

(2) Either party may call the compulsory conference—

- (a) at a time and place agreed between both parties; or
- (b) if the relevant date has passed—at a reasonable time and place nominated by the party calling the conference.

(3) For subsection (2)(b), the relevant date is—

- (a) the date falling 6 months after the claimant gave notice to the insurer of the claim; or
- (b) if the insurer required additional information, the later of the following—
  - (i) the date falling 6 months after the claimant gave notice to the insurer of the claim;
  - (ii) the date falling 1 month after the claimant gave the insurer the completed additional information form.

(4) The parties may for good reason dispense with the compulsory conference by agreement.

(5) The court may, on application by a party—

- (a) fix the time and place for the compulsory conference; or

(b) dispense with the compulsory conference for good reason; and make any other orders the court considers appropriate in the circumstances.

(6) In considering whether to dispense with the compulsory conference, the court must take into account the extent of compliance by the parties with their respective obligations related to the claim.

### **51B Procedure at conference**

(1) The compulsory conference may be held with a mediator if both parties agree.

(2) An agreement that the compulsory conference is to be held with a mediator must specify how the costs of the mediation are to be borne.

(3) The mediator must be a person independent of the parties—

- (a) agreed to by the parties; or
- (b) nominated by the registrar of the court on application under subsection (4).

(4) If the parties are unable to agree on the appointment of a mediator within 30 days after the date for the compulsory conference is fixed, either party may apply to the registrar of the court for the nomination of a mediator.

(5) At least 7 days before the compulsory conference is held, each party must give the other party—

- (a) copies of all documents not yet given to the other party that are relevant to the claim; and
- (b) a statement verifying that all relevant documents in the possession of the party or the party's lawyer have been given as required; and
- (c) details of the party's legal representation; and
- (d) if the party has legal representation—a certificate (a “**certificate of readiness**”) signed by the party's lawyer to the effect that the party is ready for trial.

(6) A certificate of readiness must state that—

- (a) the party is in all respects ready for the conference and the trial; and

- (b) all investigative material required for the trial has been obtained (including witness statements from persons, other than expert witnesses, the party intends to call as witnesses at the trial); and
- (c) medical or other expert reports have been obtained from all persons the party proposes to call as expert witnesses at the trial; and
- (d) the party has fully complied with the party's obligations to give the other parties material relevant to the claim; and
- (e) the party's lawyer has given the party a statement (a "**costs statement**") containing the information required under subsection (7).

**(7)** A costs statement must contain—

- (a) details of the legal costs payable by the party to the party's lawyer up to the completion of the conference; and
- (b) an estimate of the party's likely legal costs if the claim proceeds to trial and is determined by the court; and
- (c) a statement of the consequences to the party, in terms of costs, in each of the following cases—
  - (i) if the amount of the damages awarded by the court is equal to, or more than, the claimant's mandatory final offer;
  - (ii) if the amount of the damages awarded by the court is less than the claimant's mandatory final offer but equal to, or more than, the insurer's mandatory final offer;
  - (iii) if the amount of the damages awarded by the court is equal to, or less than, the insurer's mandatory final offer.

**(8)** The court may, on application by a party, exempt the party from an obligation to give or disclose material to another party before trial if satisfied that disclosure would alert a person reasonably suspected of fraud to the suspicion or that there is some other good reason why the material should not be disclosed.

**(9)** Each of the following is a conference participant—

- (a) the claimant or the claimant's guardian;
- (b) a person authorised by the insurer to settle the claim on the insurer's behalf.

(10) Each conference participant must (unless he or she has a reasonable excuse) attend the compulsory conference and actively participate in an attempt to settle the claim.

(11) The compulsory conference may be conducted, if the parties agree, by telephone, closed-circuit television or another form of communication allowing contemporaneous and continuous communication between the parties.

(12) The parties may, by agreement, change the time or place for holding a compulsory conference or adjourn a compulsory conference from time to time and from place to place.

### **51C Parties to exchange mandatory final offers if claim not settled at compulsory conference**

(1) If a motor vehicle accident claim is not settled at the compulsory conference, each party must (unless the court has dispensed with this obligation) exchange written final offers—

- (a) at the conference; or
- (b) if the conference has been dispensed with—within 14 days after the date of the agreement or order dispensing with the conference.

(2) A written final offer required under subsection (1) is called a **“mandatory final offer”**.

(3) A mandatory final offer for \$50 000 or less is to be exclusive of costs.

(4) If a mandatory final offer is for more than \$30 000 but not more than \$50 000, and is accepted, costs are to be calculated and paid on a basis (but subject to limits) stated under a regulation.

(5) Even though an insurer denies liability altogether, the insurer must nevertheless make a mandatory final offer but, in that event, the offer is to be expressed as an offer of \$nil.

(6) A mandatory final offer must remain open for 14 days and proceedings must not be started while the offer remains open.

(7) If the claimant brings a proceeding in a court based on a motor vehicle accident claim, the claimant must, at the start of the proceeding, file at the court a sealed envelope containing a copy of the claimant’s mandatory final offer.

(8) The insurer must, before or at the time of filing a defence, file at the court a sealed envelope containing a copy of the insurer's mandatory final offer.

(9) The court must not read the mandatory final offers until it has decided the claim.

(10) However, the court must (where relevant) have regard to the mandatory final offers in making a decision about costs.

(11) The court may, on application by a party, dispense with the obligation to make mandatory final offers.

### **51D Time for bringing action**

(1) An action for damages should be started in the court—

- (a) within 60 days after the conclusion of the compulsory conference; or
- (b) within a further period—
  - (i) agreed by the parties within the 60-day period mentioned in paragraph (a); or
  - (ii) fixed by the court on an application made by the claimant within the 60-day period mentioned in paragraph (a).

(2) If the parties or the court dispenses with the compulsory conference, an action for damages should be started in the court—

- (a) within 60 days after the later of the following—
  - (i) the date falling 6 months after the date on which the claimant gives notice to the insurer of the claim or if the insurer asks for additional information, the date on which the claimant gives the insurer the completed additional information form;
  - (ii) the date of the agreement or order dispensing with the conference; or
- (b) within a further period—
  - (i) agreed by the parties within the 60-day period mentioned in paragraph (a); or
  - (ii) fixed by the court on an application made by the claimant within the 60-day period mentioned in paragraph (a).

(3) However, if the court dispenses with the obligation to make mandatory final offers, an action for damages should be started in the court within a period fixed by the court when giving the dispensation or later.

(4) The expiry of the time within which an action should be started under subsection (1), (2) or (3) does not prevent the claimant from starting the action but—

- (a) the court may (unless the claimant establishes a reasonable excuse for the delay) order the claimant to pay, in any event, the insurer's costs arising out of the delay; and
- (b) the court may, on the insurer's application, make an order fixing a time limit within which the action must be started.

(5) If the claimant fails to start an action in the court within a time limit fixed under subsection (4)(b), the claim is barred.

### *Division 6—Proceedings in court*

## **52 Insurer to be joint or sole defendant**

(1) If an action is brought in a court for damages for personal injury arising out of a motor vehicle accident, the action must be brought against the insured person and the insurer as joint defendants.

(2) However, an action may be brought against the insurer alone if—

- (a) the insured person can not be identified; or
- (b) the insured person is dead or it is impracticable to serve the insured person.

(3) If a motor vehicle accident claim lies against 2 or more insurers, all insurers become defendants to the action, but the claim manager continues to represent all insurers in the action unless the court gives leave allowing 1 or more of the insurers to be separately represented.

(4) If judgment is given in favour of the claimant on the claim related to personal injury, the judgment must be given against the insurer and not the insured person (unless the judgment is a judgment for exemplary or punitive damages), and, if the action 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 an action under this section for the insurer to prove—



- (a) that the CTP insurance policy was obtained by fraud, or a material misstatement or nondisclosure; or
- (b) that the insured person is in breach of a contractual or statutory obligation.

(6) If legal process related to a proceeding based on a motor vehicle accident claim is served on the insurer, the insured person is also taken to have been served.

(7) If a motor vehicle accident claim lies against 2 or more insurers, and legal process related to a proceeding based on the claim is served on the claim manager, all insurers are taken to have been served.

### **52A Recovery of contribution by or from Nominal Defendant in certain cases**

(1) This section applies if—

- (a) the Nominal Defendant is 1 of 2 or more insurers liable on a motor vehicle accident claim; and
- (b) the claim is not a claim in relation to which the insurers are, under the industry deed and within the time stated in the deed, required to resolve questions about—
  - (i) which insurer is to be the claim manager; and
  - (ii) the basis on which claim costs are to be shared between the insurers.<sup>8</sup>

(2) For the recovery of contribution by or from the Nominal Defendant, the *Law Reform Act 1995*, part 3, division 2<sup>9</sup> applies as if the Nominal Defendant were a tortfeasor.

### **52B Exclusion of summary judgment on the basis of admissions**

(1) In an action for damages for personal injury arising out of a motor vehicle accident, summary judgment is not to be given on the basis of the defendant's admissions.

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<sup>8</sup> The relevant provision of the industry deed dealing with claims for which the requirement to resolve the questions is imposed is section 5(1).

<sup>9</sup> *Law Reform Act 1995*, part 3 (Tortfeasors contribution and contributory negligence), division 2 (Proceedings against, and contribution between, tortfeasors)

(2) However, this section does not prevent a court from giving a judgment by consent.

### **53 Insurer's right to call and cross-examine insured person**

In an action for damages for personal injury arising out of a motor vehicle accident, the insurer may call the insured person as a witness and, by the court's leave, cross-examine the insured person.

### **54 Mitigation of damages**

(1) If an insurer is not satisfied with the action taken by a claimant to mitigate damages, the insurer may give the claimant a written notice suggesting specified action the claimant should take to mitigate damages.

(2) The notice may, for example, suggest that—

- (a) the claimant should undergo medical treatment of a specified kind; or
- (b) the claimant should return to work or take specified steps to obtain employment; or
- (c) the claimant should undergo rehabilitation therapy of a specified kind, or undertake specified programs of rehabilitation and training.

(3) In assessing damages for personal injury arising out of a motor vehicle accident, the court must—

- (a) consider whether the claimant has failed to take reasonable steps to mitigate damages by not following suggestions made under this section; and
- (b) if it appears the claimant has failed to take reasonable steps to mitigate damages by not following the suggestions—reduce the claimant's damages to an appropriate extent reflecting the failure.

### **55 Awards of exemplary, punitive or aggravated damages**

(1) No award of exemplary, punitive or aggravated damages may be made against an insurer on a motor vehicle accident claim.

(2) However, if the court is of the opinion that the conduct of an insured person is so reprehensible that an award of exemplary, punitive or

aggravated damages is justified, the court may give a separate judgment against the insured person for the payment of exemplary, punitive or aggravated damages.

(3) An insured person is not entitled, under a CTP insurance policy, to an indemnity against an award of exemplary, punitive or aggravated damages.

### **55A Damages for loss of earnings or earning capacity**

(1) In assessing damages for loss of earnings or loss of earning capacity, the court must disregard earnings or prospective earnings above the limit fixed by subsection (2).

(2) The limit is a rate of 3 times average weekly earnings per week.

### **55B Discount rate to be applied in calculating the present value of future loss**

If—

- (a) a claimant is to be compensated for future expenditure or loss; and
- (b) an actuarial multiplier is to be used to calculate the present value of future loss;

a discount rate of 5% is to be applied in determining the actuarial multiplier.

### **55C Damages for loss of consortium or loss of servitium**

(1) A court must not award damages for loss of consortium or loss of servitium unless—

- (a) the injured person died as a result of injuries suffered in the motor vehicle accident; or
- (b) general damages for the injured person are assessed (before allowing for contributory negligence) at \$30 000 or more.

(2) The court must not assess damages for loss of servitium above the limit fixed by subsection (3).

(3) The limit is 3 times average weekly earnings per week.

**55D Damages for gratuitous services**

(1) Damages are not to be awarded for gratuitous services unless—

- (a) the services are necessary; and
- (b) the need for the services arose out of the personal injury suffered in the motor vehicle accident.

(2) Damages are not to be awarded for gratuitous services if gratuitous services of the same kind were being provided for the injured person before the date of the motor vehicle accident.

(3) Damages are not to be awarded for gratuitous services replacing services the injured person provided, or would have provided if the injury had not occurred, for others outside the injured person's household.

(4) In assessing damages for gratuitous services, a court must take into account—

- (a) any offsetting benefit the service provider obtains through providing the services; and
- (b) periods for which the injured person has not required or is not likely to require the services because the person has been or is likely to be cared for in a hospital or other institution.

**55E Interest**

(1) Interest awarded on damages compensating past monetary loss—

- (a) must not exceed interest at the appropriate rate; and
- (b) must be related in an appropriate way to the period over which the loss was incurred.

(2) The appropriate rate is the rate for 10 year Treasury bonds published by the Reserve Bank of Australia under 'Interest rates and yields—capital market' as at the beginning of the quarter in which the award of interest is made.

*Example—*

Suppose that past monetary loss consists of medical expenses which have been incurred at a uniform rate over a certain period. The interest to be awarded would be calculated in accordance with the following formula—

$$A = am/100 \times p \times 0.5$$

where—

“A” is the amount of the award of interest.

- “a” is a percentage rate decided by the court subject to the limit fixed in subsection (2).
- “m” is the aggregate of the medical expenses.
- “p” is the period over which the medical expenses have been incurred (expressed in years).

### **55F Costs in cases involving relatively small awards of damages**

(1) This section applies if a court awards \$50 000 or less in damages in a proceeding based on a motor vehicle accident claim (but it does not apply to the costs of an appellate proceeding).

(2) If the court awards \$30 000 or less, the court must apply the following principles—

- (a) if the amount awarded is less than the claimant’s mandatory final offer but more than the insurer’s mandatory final offer, no costs are to be awarded;
- (b) if the amount awarded is equal to, or more than, the claimant’s mandatory final offer, costs are to be awarded to the claimant on an indemnity basis as from the date on which the proceedings started (but no award is to be made for costs up to that date);
- (c) if the amount awarded is equal to, or less than, the insurer’s mandatory final offer, costs are to be awarded to the insurer on a standard basis as from the date on which the proceedings started (but no award is to be made for costs up to that date).

(3) If the court awards more than \$30 000 but not more than \$50 000 in damages, the court must apply the following principles—

- (a) if the amount awarded is less than the claimant’s mandatory final offer but more than the insurer’s mandatory final offer, costs are to be awarded to the claimant on a standard basis up to a maximum of \$2 500;
- (b) if the amount awarded is equal to, or more than, the claimant’s mandatory final offer, costs are to be awarded to the claimant on the following basis—
  - (i) costs up to the date on which the proceedings started are to be awarded on a standard basis up to a limit of \$2 500;
  - (ii) costs on or after the date on which the proceedings started are to be awarded on an indemnity basis;

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- (c) if the amount awarded is equal to, or less than, the insurer's mandatory final offer, costs are to be awarded on the following basis—
- (i) costs up to the date on which the proceedings started are to be awarded to the claimant on a standard basis up to a limit of \$2 500;
  - (ii) costs on or after the date on which the proceedings started are to be awarded to the insurer on a standard basis.

(4) Despite the limitations imposed by this section, the court may make an award of costs to compensate a party for costs resulting from a failure by another party to comply with procedural obligations under this part.

(5) The court must not award costs to a party related to the introduction of evidence by the party that is unnecessarily repetitive.

*Example—*

If a claimant calls 2 or more expert witnesses from the same area of expertise to give evidence to substantially the same effect, and the claimant is entitled to costs of action under the principles laid down in this section, the court will only allow costs related to 1 of the expert witnesses.

(6) Unless an award of damages is affected by factors that were not reasonably foreseeable at the time of the exchange of mandatory final offers, the court must not award costs to a party related to investigations or gathering of evidence by the party after—

- (a) the conclusion of the compulsory conference; or
- (b) if the parties or the court dispenses with a compulsory conference—the date when the parties completed the exchange of mandatory final offers.

(7) If an award of damages is affected by factors that were not reasonably foreseeable by a party at the time of making the party's mandatory final offer, the court may, if satisfied that it is just to do so, make an order for costs under subsection (2) or (3) as if the reference to a mandatory final offer in the relevant subsection were a reference to a later offer made in the light of the factors that became apparent after the parties completed the exchange of mandatory final offers.

*Example—*

Suppose that a claimant's medical condition suddenly and unexpectedly deteriorates after the date of the final offers and the court makes a much higher award of damages than would have been reasonably expected at that time. In that case, the court may

ignore the mandatory final offers and award costs on the basis of later offers of settlement.

## **56 Exclusion of jury trial**

A proceeding in a court based on a motor vehicle accident claim must be decided by the court sitting without a jury.

## **57 Alteration of period of limitation**

(1) If notice of a motor vehicle accident claim is given under division 3, or an application for leave to bring a proceeding based on a motor vehicle accident claim is made under division 3, before the end of the period of limitation applying to the claim, the claimant may bring a proceeding in court based on the claim even though the period of limitation has ended.

(2) However, the proceeding may only be brought after the end of the period of limitation if it is brought within—

- (a) 6 months after the notice is given or leave to bring the proceeding is granted; or
- (b) a longer period allowed by the court.

(3) If during the last 14 days of the period of limitation, the claimant wants to give a notice of claim under division 3 but is unsure to which insurer the notice should be given, the notice is validly given if it is given to the commission.

(4) After receiving a notice of claim under subsection (3), the commission must make inquiries to decide the insurer against which the claim properly lies, and pass the notice of claim on to the appropriate insurer.

(5) If a period of limitation is extended under part 3 of the *Limitation of Actions Act 1974*, this section applies to the period of limitation as extended under the part.

### ***Division 6A—Extraterritorial operation of limitation of liability***

## **57A Application of limitation of liability to foreign awards**

(1) This section applies to motor vehicle accident claims arising out of motor vehicle accidents in Queensland.

(2) It is Parliament's intention that the limits on liability for damages for personal injury arising out of motor vehicle accidents—

- (a) are to apply (to the full extent of the Parliament's extraterritorial legislative capacity) whether damages are assessed in Queensland or elsewhere; and
- (b) are to be regarded by courts within and outside Queensland as substantive (rather than procedural) provisions.

(3) If a claimant, by proceeding in a court outside Queensland, recovers damages in excess of the amount that could have been recovered if the limits on liability referred to in subsection (2) had been applied, the person liable to pay the damages may recover from the claimant the amount by which the amount of the damages exceeds the amount that would have been recovered if the action had been brought in Queensland.

### *Division 6B—Structured settlements*

#### **57B Court may make consent order for structured settlement**

(1) This section applies if the parties to a claim agree to settle the claim by making a structured settlement and apply to the court for an order approving of or in the terms of the structured settlement.

(2) The court may make the order even though the payment of damages is not in the form of a lump sum award of damages.

(3) In this section—

**“structured settlement”** means an agreement providing for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.

### *Division 7—Insurer's rights of recourse*

#### **58 Insurer's rights of recourse**

(1) If—

- (a) personal injury arises out of a motor vehicle accident; and
- (b) the insured person was at the relevant time using the motor vehicle without the owner's authority, without lawful justification



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or excuse, and without reasonable grounds to believe that the insured person had the owner's authority, or lawful justification or excuse, for using the motor vehicle;

the insurer may recover, as a debt, from the insured person any costs reasonably incurred by the insurer on a claim for the personal injury.

(2) If—

- (a) personal injury arises out of a motor vehicle accident; and
- (b) the insured person intended to injure the claimant or some other person;

the insurer may recover, as a debt, from the insured person any costs reasonably incurred by the insurer on a claim for the personal injury.

(3) If—

- (a) personal injury arises out of a motor vehicle accident; and
- (b) the insured person was, at the time of the accident, the driver of the motor vehicle; and
- (c) the insured person was, at the time of the accident, unable to exercise effective control of the motor vehicle because of the consumption of—
  - (i) alcohol; or
  - (ii) a non-medicinal drug or a combination of non-medicinal drugs; or
  - (iii) a combination of alcohol and a non-medicinal drug or non-medicinal drugs;

the insurer may recover, as a debt, from the insured person any costs reasonably incurred by the insurer on a claim for personal injury that are reasonably attributable to the insured person's inability to exercise effective control of the motor vehicle.

(4) If—

- (a) personal injury arises out of a motor vehicle accident; and
- (b) the motor vehicle accident giving rise to the injury is attributable in whole or in part to a defect in the motor vehicle; and
- (c) the defect arose from the wrongful act or omission of the manufacturer or a person who carries on a business of repairing motor vehicles;

the insurer may recover, as a debt, from the manufacturer or repairer the proportion of the costs reasonably incurred by the insurer on a claim for the personal injury that reasonably reflects the degree of the manufacturer's or repairer's responsibility for the accident.

(5) However, it is a defence for the manufacturer or repairer to prove that the driver of the motor vehicle drove it with knowledge of the defect and its likely effect.

(6) An action by an insurer under this section may be brought separately or by way of third-party proceeding.

### **59 Recovery in case of fraud**

(1) An insurer may recover from a claimant or other person who defrauds or attempts to defraud the insurer on a motor vehicle accident claim any costs reasonably incurred by the insurer because of the fraud.

(2) In subsection (1)—

“insurer” includes the Nominal Defendant.

### **60 Nominal Defendant's rights of recourse for uninsured vehicles**

(1) If personal injury arises out of a motor vehicle accident involving an uninsured vehicle, the Nominal Defendant may recover, as a debt, from the owner or driver of the vehicle (or both) any costs reasonably incurred by the Nominal Defendant on a claim for the personal injury.

(2) It is a defence to an action by the Nominal Defendant under this section—

- (a) as far as recovery is sought against the owner—for the owner to prove—
  - (i) that the motor vehicle was driven without the owner's authority; or
  - (ii) that the owner believed on reasonable grounds that the motor vehicle was insured; and
- (b) as far as recovery is sought against the driver—for the driver to prove that the driver believed on reasonable grounds that the driver had the owner's consent to drive the motor vehicle and that the motor vehicle was insured.

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

(4) This section does not affect rights of recovery that the Nominal Defendant may have, apart from this section, against the insured person.

### **60A Access to information etc.**

The Nominal Defendant is entitled to have access to information and materials in the possession of any department, agency or instrumentality of the State or any local government that may be relevant to the recovery of amounts the Nominal Defendant is entitled to recover under this part.

### **61 Nominal Defendant's rights of recourse against insurer**

(1) If an insurer becomes insolvent, any costs reasonably incurred by the Nominal Defendant on claims under CTP insurance policies for which the insolvent insurer was the insurer become debts of the insolvent insurer to the Nominal Defendant and provable in the insolvency.

(2) The debts of the insolvent insurer that arise under subsection (1) have the same order of priority in the winding-up of the insolvent insurer as if the Nominal Defendant were the insured person under policies of insurance issued by the insolvent insurer.

(3) If the claim for which costs were 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.

## **PART 5—LICENSED INSURERS**

### *Division 1—Licensing of insurers*

#### **62 Application for licence**

(1) A body corporate carrying on the business of general insurance in Queensland may apply to the commission for a licence under this part.

(2) The application—

- (a) must be made in writing; and
- (b) must be accompanied by the information and materials that may be required by regulation.

(3) The applicant must provide the commission with the further information or materials that the commission may require to decide the application.

(4) The commission may, for example, require the applicant to provide—

- (a) particulars of shareholders, directors, managers and staff; and
- (b) copies of returns and accounts that the applicant is required by law to prepare; and
- (c) particulars of reinsurance arrangements to which the applicant is a party.

(5) If an application is made for a licence and, before a licence is granted, there is a change in the matters of which particulars are required in the application, or in the matters contained in a document the applicant is required to give, the body corporate must, within 14 days after the change, give the commission written notice signed by a director giving particulars of the change.

(6) A body corporate must not—

- (a) make an application for a licence; or
- (b) give to the commission a notice under subsection (5);

that is false or misleading in a material particular.

Maximum penalty for subsection (6)—150 penalty units.

### **63 Determination of application**

(1) The commission may, after considering an application for a licence—

- (a) grant the licence (conditionally or unconditionally); or
- (b) refuse the application.

(2) In determining the application, the commission may take into consideration—

- (a) the suitability of the applicant; and
- (b) the nature and extent of the applicant's experience in the business of general insurance; and
- (c) the applicant's paid-up share capital and reserves; and
- (d) any reinsurance arrangements to which the applicant is a party; and
- (e) the likely effect on the statutory scheme of licensing the applicant; and
- (f) any other factors the commission considers relevant.

(3) A licence may be granted only if the commission is satisfied that—

- (a) the applicant has enough financial resources to carry on business as a licensed insurer; and
- (b) the applicant has adequately experienced staff available in Queensland to administer personal injury claims under the CTP insurance scheme; and
- (c) the applicant is in all other respects an appropriate person to hold a licence; and
- (d) licensing the applicant would not adversely affect the efficiency and effectiveness of the statutory insurance scheme.

(4) A licence must not be granted until the insurer has executed the industry deed.

(5) Notice of the grant of a licence under this part, specifying the date on which the licence takes effect, must be given in the gazette.

### **64 Conditions of licence**

(1) A licence is subject to conditions prescribed by regulation.

(2) A licence may be granted subject to other conditions that the commission considers appropriate and specifies in the licence.

(4) The commission may, by written notice given to a licensed insurer—

- (a) impose conditions or further conditions to which the licence is to be subject; or
- (b) amend or repeal conditions previously imposed.

(5) A condition can not be imposed to give a particular advantage over other licensed insurers.

(6) A licensed insurer must not contravene a condition of the licence.

Maximum penalty—150 penalty units.

(7) A court by which a licensed insurer is convicted of an offence against subsection (6) may, by order, withdraw the licence.

## **65 Industry deed**

(1) A licensed insurer is bound by the industry deed.

(2) The industry deed may—

- (a) require licensed insurers to make disclosures and reports to the commission in accordance with stipulated standards and requirements; and
- (b) deal with the apportionment of liability, and the sharing of costs, between licensed insurers (including the Nominal Defendant); and
- (ba) provide for the appointment of a person to arbitrate disputes between 2 or more insurers about a motor vehicle accident claim; and
- (c) provide for the sharing of information between insurers to the mutual benefit of insurers; and
- (d) regulate the management of claims under CTP insurance policies; and
- (e) provide direction and guidance for licensed insurers about initiating, managing, monitoring, and measuring the effectiveness of, the provision of rehabilitation services for injured claimants; and

- (f) regulate in any other way the conduct of insurance business under the statutory insurance scheme.

## **66 Withdrawal or suspension of licence**

(1) The commission may, by gazette notice, withdraw or suspend a licence if—

- (a) the insurer asks the commission to withdraw or suspend the licence; or
- (b) the insurer contravenes this Act, a condition of the licence or the industry deed; or
- (c) there is some other reason justifying withdrawal or suspension of the licence.

(2) At least 14 days before the withdrawal or suspension of a licence takes effect, the commission must give the insurer written notice—

- (a) stating the commission's intention to withdraw or suspend the licence; and
- (b) stating the date on which the withdrawal or suspension will take effect; and
- (c) stating the reason for the proposed withdrawal or suspension of the licence.

(3) The commission must give a copy of the notice to transport administration.

## **67 Effect of withdrawal or suspension on existing liabilities etc.**

(1) The withdrawal or suspension of a licence does not affect liabilities that had been incurred, or had accrued, before the day of withdrawal or suspension, nor does it affect the insurer's liabilities under CTP insurance policies that came into force before the day of the withdrawal or suspension.

(2) An insurer whose licence has been withdrawn, or is under suspension, is subject to this Act and the industry deed in the same way and to the same extent as a licensed insurer until all the insurer's liabilities for CTP insurance business have been fully satisfied.

(3) If an insurer whose licence has been withdrawn, or is under suspension, is selected or re-selected to be the insurer under a CTP

insurance policy, some other insurer decided by transport administration is to be the insurer under the insurance policy.

(4) Transport administration's decision under subsection (3) must be based on random allocation of the CTP policies to the remaining licensed insurers in proportion to their respective shares of the market for CTP insurance.

(5) This section is subject to the following qualifications where a licence is withdrawn on the transfer, or because of the transfer, of CTP insurance business under part 3, division 5<sup>10</sup>—

- (a) if the transferor's entire CTP business is transferred—this section does not apply to the withdrawal of the licence;
- (b) if part of the transferor's CTP business is transferred—this section applies to the withdrawal subject to section 30(4).<sup>11</sup>

## **68 Appeals against the commission's decisions**

(1) An insurer may appeal to the Supreme Court against a decision by the commission to withdraw or suspend the insurer's licence.

(2) On the appeal, the Supreme Court may—

- (a) confirm, change or reverse the decision under appeal; and
- (b) make any consequential or ancillary orders (including orders for costs) that may be necessary or desirable in the circumstances of the case.

(3) If the court changes or reverses the commission's decision, the commission must publish notice of the Supreme Court's decision in the gazette.

### *Division 2—Supervision of licensed insurers*

## **69 Business plans of licensed insurers**

(1) A licensed insurer must prepare and give to the commission a business plan for its compulsory third-party insurance business.

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10 Part 3 (Compulsory insurance), division 5 (Transfer of CTP business)

11 Section 30 (Transfer of CTP business)



(2) The licensed insurer's first business plan must be prepared and given to the commission before the licence is granted.

(3) The licensed insurer must revise its business plan whenever it departs significantly from the plan and at the regular intervals that the commission directs by written notice.

(4) The licensed insurer must, as far as practicable, conduct its compulsory third-party insurance business in accordance with its current business plan.

(5) If the insurer departs significantly from the business plan, it must notify the commission of the departure within 2 months after it happens.

(6) A business plan—

(a) must describe how the insurer's compulsory third-party business is to be conducted (including marketing, claims handling, the provision of rehabilitation, the keeping of records, systems management and control of costs); and

(b) must be prepared in accordance with the written guidelines issued by the commission and notified to licensed insurers.

## **70 Accounts and returns of licensed insurers**

(1) A licensed insurer must keep the accounting and other records about its business, and its financial position, that may be required by this Act or the industry deed.

(2) The regulations may prescribe accounting or other standards with which the records must comply.

(3) A licensed insurer must file returns and other documents with the commission as required by the industry deed or regulation.

Maximum penalty—150 penalty units.

(4) The regulations may require that returns or accompanying documents be certified by an auditor or actuary.

## **71 Audit of accounts**

(1) The commission may appoint an appropriately qualified person—

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- (a) to inspect or audit, and report to the commission on, the accounting and other records about the business, or the financial position, of a licensed insurer; or
- (b) to carry out an actuarial investigation into, and report to the commission on, the assets and liabilities, or any class of assets or liabilities, of a licensed insurer.

(2) The appointed person may inspect the accounting and other records of the licensed insurer.

(3) The licensed insurer must provide all reasonable help to assist the inspection, audit or actuarial investigation.

(4) A person must not wilfully delay or obstruct a person exercising powers under this section.

Maximum penalty—150 penalty units or imprisonment for 1 year.

(5) A statement made orally or in writing by a person exercising powers under this section is protected by qualified privilege.

## **72 Information to be provided by insurers**

(1) A licensed insurer must immediately inform the commission if—

- (a) the insurer or a related body corporate fails to make a payment of principal or interest required under any debenture or security issued by the insurer or the related body corporate; or
- (b) a liquidator, receiver or receiver and manager of property of the insurer or a related body corporate is appointed; or
- (c) the insurer or a related body corporate resolves to be wound up; or
- (d) another event happens of a nature prescribed by regulation.

(2) The commission may require a licensed insurer—

- (a) to disclose to the commission, within the time allowed by the commission, specified information about the business or the financial position of the insurer or a related body corporate; or
- (b) to give to the commission, within the time allowed by the commission, copies of specified documents.

(3) A requirement under subsection (2) must be made in writing and must state the time within which the requirement must be complied with.

(4) If a requirement under subsection (2) is not complied with, the insurer commits an offence.

Maximum penalty—300 penalty units.

(5) In this section—

“**licensed insurer**” includes a body corporate formerly licensed under this Act.

### **73 Power of Supreme Court to deal with licensed insurers**

(1) If the Supreme Court is satisfied, on application by the commission, that a licensed insurer or former licensed insurer—

- (a) may not be able to meet the insurer’s liabilities under CTP insurance policies; or
- (b) has acted in a way prejudicial to the interests of persons insured under CTP insurance policies;

the Supreme Court may make orders that it considers necessary or desirable to protect the statutory insurance scheme and to ensure, as far as practicable, that the insurer properly discharges its obligations under the statutory insurance scheme.

(2) The Supreme Court may, for example, make orders (including interim orders that are to apply pending the final determination of the application)—

- (a) regulating the administration and payment of claims under CTP insurance policies; or
- (b) prohibiting or regulating any transfer or disposal of, or dealing in, assets; or
- (c) requiring the licensed insurer or former licensed insurer to discharge liabilities under CTP insurance policies out of its assets or the assets of a related body corporate; or
- (d) appointing a receiver or receiver and manager, with the powers that the court directs, of property or part of the property of the licensed insurer or former licensed insurer or a related body corporate.

(3) The Supreme Court may not require the commission to give an undertaking about damages as a condition of granting an interim order.

(4) On the application of any interested person, the Supreme Court may amend or revoke an order under this section.

(5) The powers conferred on the Supreme Court under this section are not to be exercised in relation to a body corporate that is being wound up.

### *Division 3—Special investigations*

#### **74 Appointment of investigator**

(1) If the commission considers it desirable in the public interest, the commission may appoint an investigator to investigate the affairs of an insurer that is, or has been, licensed under this Act.

(2) A person is eligible to be appointed as an investigator only if the person is a properly qualified legal practitioner, a properly qualified accountant, or has other appropriate qualifications or experience to carry out an investigation under this division.

(3) The instrument of appointment—

- (a) must state the terms of the appointment; and
- (b) must state the matters into which the investigation is to be made; and
- (c) may state a period within which the investigation must be completed.

(4) The commission may, by written notice given to the investigator—

- (a) amend the instrument of appointment in any way; or
- (b) end the appointment.

#### **75 Investigation of related body corporate**

If an investigator considers it necessary, in investigating the affairs of an insurer, to investigate the affairs of a body corporate that is or has at any relevant time been a related body corporate, the investigator may investigate the affairs of the body corporate with the commission's written agreement.

## **76 Powers of investigators**

(1) An investigator may, by written notice, require an officer of an insurer or body corporate whose affairs are under investigation—

- (a) to produce to the investigator documents of the insurer or body corporate and other documents about its affairs that are in the custody or under the control of the officer; and
- (b) to give the investigator all reasonable help in connection with the investigation; and
- (c) to appear before the investigator for examination on oath or affirmation.

(2) An investigator may administer an oath or affirmation.

## **77 Documents produced to investigator**

(1) If a document is produced to an investigator under this division, the investigator may keep the document for the period that the investigator reasonably considers necessary for the investigation.

(2) The investigator must permit a person who would be entitled to inspect the document, if it was not being kept by the investigator, to inspect the document at all reasonable times.

## **78 Examination of officers**

(1) If the affairs of an insurer or other body corporate are being investigated under this division, an officer of the insurer or body corporate must not—

- (a) fail to comply with a lawful requirement (a “**relevant requirement**”) of the investigator to the extent the officer is able to comply with it; or
- (b) in purported compliance with a relevant requirement, give information knowing it to be false or misleading in a material particular; or
- (c) when appearing before an investigator for examination under a relevant requirement—
  - (i) state anything knowing it to be false or misleading in a material particular; or

- (ii) fail to be sworn or to make an affirmation.

Maximum penalty—300 penalty units or imprisonment for 2 years.

(2) A person who complies with the requirement of an investigator under this section does not incur any liability to another merely because of the compliance.

(3) A person required to attend for examination under this division is entitled to the allowances and expenses prescribed by regulation.

## **79 Self-incrimination**

(1) An officer is not excused from—

- (a) answering a question put to the officer by an investigator; or
- (b) producing a document to an investigator;

on the ground that the answer or production of the document might tend to incriminate the officer.

(2) Before an investigator requires an officer to answer a question or to produce a document, the investigator must inform the officer—

- (a) of the officer's right to assert that answering the question or production of the document might tend to incriminate the officer; and
- (b) of the effect under subsection (3) of making the assertion.

(3) Neither the answer, nor the fact that the officer has produced the document, is admissible in evidence against the officer in a criminal proceeding (other than a proceeding about the falsity of the answer or document) if—

- (a) before answering the question or producing the document, the officer asserts that answering the question or production of the document might tend to incriminate the officer; and
- (b) answering the question or production of the document might in fact tend to incriminate the officer.

## **80 Failure of officer to comply with requirement of investigator**

(1) If an officer fails to comply with a requirement of an investigator, the investigator may certify the failure to the Supreme Court.

(2) If an investigator gives a certificate under subsection (1), the court may inquire into the case and may—

- (a) order the officer to comply with the requirements of the investigator within a period fixed by the court; and
- (b) if the court is satisfied that the officer failed without lawful excuse to comply with the requirement of the investigator—punish the officer in the same way as if the officer had been guilty of contempt of the court.

### **81 Recording of examination**

(1) An investigator must cause a record of the questions asked and the answers given at an examination under this division to be made.

(2) Subject to section 79, a record of the examination of a person under this division may be used in evidence in a legal proceeding against the person.

(3) A copy of the record of the examination of a person must be given without fee to the person on the written request of the person.

(4) A record made under this section about an investigation must be included with the investigator's final report on the investigation.

(5) Nothing in this section affects or limits the admissibility of other written or oral evidence.

### **82 Copy of record of examination may be given to legal practitioner**

(1) The commission may give a copy of the record of any examination made under section 81 to a legal practitioner who satisfies the commission that the practitioner is acting for a person who is conducting, or is in good faith contemplating, legal proceedings about affairs being investigated by an investigator under this division.

(2) The legal practitioner to whom a copy of a record is given under subsection (1)—

- (a) must use the record only for the legal proceedings; and
- (b) must not publish or communicate the record or any part of it for any other purpose.

Maximum penalty for subsection (2)—300 penalty units.

**83 Delegation of powers by investigator**

(1) An investigator may delegate any powers under this division except the power to administer oaths or affirmations and the power to examine on oath or affirmation.

(2) A delegate must produce the instrument of delegation for inspection on request by an officer of an insurer or body corporate whose affairs are being investigated under this division.

**84 Report of investigator**

(1) An investigator may, and, if directed by the commission, must make interim reports to the commission.

(2) On the completion or termination of the investigation, the investigator must report to the commission the investigator's opinion on the matters subject to the investigation, together with the facts on which the opinion is based.

(3) When making a report under this section, an investigator must give to the commission any documents of which the investigator has taken possession under this division.

(4) The commission—

- (a) may keep the documents for the period that the commission reasonably considers necessary to enable a decision to be made about whether or not a legal proceeding ought to be started; and
- (b) may keep the documents for any further period that the commission reasonably considers necessary to enable a legal proceeding to be started and continued; and
- (c) may permit other persons to inspect the documents while they are in the commission's possession; and
- (d) may permit the use of the documents for a legal proceeding started because of the investigation; and
- (e) must permit a person who would be entitled to inspect any of the documents if they were not in the commission's possession to inspect the document at all reasonable times.

(5) A copy of a final report must, and a copy of the whole or any part of an interim report may, be given by the commission to the insurer or other body corporate to which the report relates.



(6) However, the commission is not bound to give an insurer or other person a copy of a report, or any part of a report, if the commission is of the opinion that there is good reason for not divulging its contents.

(7) If the commission is of the opinion that it is in the public interest, the commission may cause the whole or any part of a report to be printed and published.

(8) If an investigator has caused a record of an examination under this division to be given to the commission with the report to which the record relates, a copy of the record may be given to the persons, and on the conditions, that the commission considers appropriate.

### **85 Admission of investigator's report in evidence**

(1) A document certified by the commission to be a copy of an investigator's report is admissible in any legal proceeding as evidence of any facts found by the investigator to exist.

(2) Nothing in this section operates to diminish the protection given to witnesses by law.

### **86 Costs of investigation**

(1) The commission may recover the costs of and incidental to an investigation under this division from the insurer or other body corporate to which the investigation is related.

(2) However, costs may not be recovered from an insurer or other body corporate under this section if the investigation established no irregularity on the part of the insurer or other body corporate.

### **87 Offences relating to investigations**

(1) A person who—

- (a) conceals, destroys, mutilates or alters a document of or about an insurer or other body corporate whose affairs are being investigated under this division; or
- (b) sends, causes to be sent or conspires with someone else to send, out of the State a document mentioned in paragraph (a) or any property belonging to or under the control of the insurer or body corporate;

commits an offence.

Maximum penalty—300 penalty units or imprisonment for 2 years.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant did not act with intent to defeat the purposes of this division or to delay or obstruct the carrying out of an investigation under this division.

## **PART 5A—ENFORCEMENT**

### *Division 1—Authorised persons*

#### **87A Appointment of authorised person**

(1) The commission may appoint a person as an authorised person if the commission considers the person has the necessary expertise or experience to be an authorised person.

(2) Even though a person who is an officer or employee of transport administration or who is subject to transport administration's administrative control or supervision may have, in that capacity, some of the functions of an authorised person under this part, the officer or employee is not to be regarded as an authorised person unless appointed as an authorised person by the commission.

#### **87B Functions and powers of authorised person**

(1) An authorised person has the following functions—

- (a) to monitor compliance with this Act;
- (b) to investigate suspected offences against this Act;
- (c) to investigate, at the commission's direction, claims against an insurer, and liabilities that may be owed to an insurer, under this Act.

(2) An authorised person has the powers given to the person under this Act or another Act.

(3) An authorised person is subject to the commission's directions in exercising the authorised person's powers.

(4) The powers of an authorised person may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice given by the commission to the authorised person.

### **87C Authorised person's employment conditions**

(1) An authorised person holds office on the conditions stated in the instrument of appointment.

(2) An authorised person—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice given to the commission; and
- (c) if the conditions of office provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

(3) However, an authorised person may not resign from the office of authorised person (the “**secondary office**”) if a term of the authorised person's employment to the main office requires the authorised person to hold the secondary office.

### **87D Authorised person's identity card**

(1) The commission must give an identity card to each authorised person.

(2) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the authorised person; and
- (c) identify the person as an authorised person for the commission; and
- (d) include an expiry date; and
- (e) be signed by the commissioner.

(3) A person who ceases to be an authorised person must return the person's identity card to the commission within 7 days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **87E Display of authorised person's identity card**

(1) An authorised person may exercise a power in relation to someone else only if the authorised person—

- (a) first produces his or her identity card for the person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the person.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

### **87F Protection from liability**

(1) An authorised person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an authorised person, the liability attaches instead to the commission.

## *Division 2—Powers of authorised persons*

### **87G Power to require information**

(1) This section applies if an authorised person believes on reasonable grounds that a person has information, or documents providing information, relevant to any of the following matters—

- (a) a liability under the statutory insurance scheme;
- (b) an entitlement under the statutory insurance scheme;
- (c) an offence the authorised person reasonably believes has been committed against this Act.

(2) The authorised person may require the person to give the information to, or produce the documents for inspection by, the authorised person at a reasonable time and place nominated by the authorised person and allow the authorised person to make a copy of the documents.

(3) To avoid doubt, it is declared that under subsection (2), an authorised person may require the information to be given, or the documents to be produced immediately, at the place the requirement is made, if the requirement is reasonable in the circumstances.

(4) When making the requirement, the authorised person must warn the person it is an offence to fail to give the information, or produce the documents, unless the person has a reasonable excuse.

(5) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(6) A person has a reasonable excuse for failing to give the information or produce the documents if—

- (a) the person would be entitled to refuse to give the information or produce the document in a court proceeding on the ground that giving the information or producing the documents would tend to incriminate the person; or
- (b) in the case of a requirement to produce documents—the cost of producing the documents would, having regard to their evidentiary value and any other relevant circumstances, be unreasonable.

(7) The person does not commit an offence against this section if the information or documents sought by the authorised person are not in fact relevant to a matter mentioned in subsection (1).

### **87H Application for warrant**

(1) An authorised person may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(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.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

**87I Issue of warrant**

(1) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is at the place, or, within the next 7 days, may be at the place.

(2) The warrant must state—

- (a) that a stated authorised person may, with necessary and reasonable help and force—
  - (i) enter the place and any other place necessary for entry; and
  - (ii) exercise the authorised person’s powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

**87J Special warrants**

(1) An authorised person may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the authorised person’s remote location.

(2) Before applying for the special warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax a copy (a **“facsimile warrant”**) to the authorised person if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the authorised person—

- (a) the magistrate must tell the authorised person—
  - (i) what the terms of the special warrant are; and
  - (ii) the date and time the special warrant is issued; and
- (b) the authorised person must complete a form of warrant (a **“warrant form”**) and write on it—
  - (i) the magistrate’s name; and
  - (ii) the date and time the magistrate issued the special warrant; and
  - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the authorised person completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) A court must find the exercise of the power by an authorised person was not authorised by a special warrant if—

- (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant mentioned in subsection (1); and
- (b) the special warrant is not produced in evidence; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the authorised person obtained the special warrant.

**87K Warrants—procedure before entry**

(1) This section applies if an authorised person named in a warrant issued under this part for a place is intending to enter the place under the warrant.

(2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised person's identity card or other document evidencing the authorised person's appointment;
- (b) give the person a copy of the warrant or if the entry is authorised by a facsimile warrant or warrant form mentioned in section 87J(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the authorised person is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.

(3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

**87L Power to seize evidence**

(1) An authorised person who enters a place with a warrant may search for and seize the evidence for which the warrant was issued.

(2) An authorised person may also seize another thing if the authorised person believes on reasonable grounds—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being concealed, lost or destroyed.

**87M Receipt for seized things**

(1) As soon as practicable after a thing is seized by an authorised person, the authorised person must give a receipt for it to the person from whom it was seized.



(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure in a reasonably secure way and in a conspicuous position.

### **87N Access to seized things**

Until a seized thing is returned or otherwise finally dealt with, an authorised person must allow its owner—

- (a) to inspect it; or
- (b) if it is a document—to make copies of it.

### **87O Return of seized thing**

(1) The authorised person must return a seized thing to its owner at the end of—

- (a) 6 months; or
- (b) if a prosecution for an offence involving it is started within 6 months—the prosecution and any appeal from the prosecution.

(2) Despite subsection (1), the authorised person must return the seized thing to its owner immediately the authorised person stops being satisfied its retention as evidence is necessary.

## ***Division 3—Other enforcement matters***

### **87P Compensation**

(1) A person may claim an amount by way of compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under this part, including, for example, in complying with a requirement made of the person under this part.

(2) The amount may be claimed from the commission.

(3) Payment of the amount may be claimed and ordered—

- (a) in civil proceeding for a debt; or
- (b) in a proceeding for an offence against this Act brought against the person making the claim for the amount.

(4) A court may order the payment of the amount for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

(5) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

### **87Q Costs of investigation**

(1) This section applies if a person is convicted by a court of an offence against this Act.

(2) The court may order the person to pay the commission's reasonable costs of any investigation about the offence, including reasonable costs of preparing for the prosecution.

(3) This section does not limit the orders for costs the court may make on the conviction.

### *Division 4—Obstructing or impersonating authorised persons*

#### **87R Obstruction of authorised persons**

(1) A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) In this section—

“**obstruct**” includes hinder, resist or attempt to obstruct.

#### **87S Impersonation of authorised persons**

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

### *Division 5—Fraud and false and misleading statements*

#### **87T Offences involving fraud**

(1) A person must not in any way—

- (a) defraud or attempt to defraud the commission, or the Nominal Defendant or another insurer; or
- (b) deliberately mislead or attempt deliberately to mislead the commission, the Nominal Defendant or another insurer; or
- (c) connive at conduct by another that contravenes paragraph (a) or (b).

Maximum penalty—400 penalty units or 18 months imprisonment.

(2) If conduct that constitutes an offence defined in subsection (1) is recurrent so that, but for this subsection, each instance of the conduct would constitute a separate offence, 2 or more instances of the conduct are to be taken to constitute but 1 offence committed over a period specified in the complaint laid in relation to the conduct, and may be charged and be dealt with on 1 complaint.

### **87U False or misleading information or documents**

(1) This section applies to a statement made or document given in connection with a claim under the statutory insurance scheme to the commission, the Nominal Defendant or another insurer.

(2) A person must not state anything to the commission, or the Nominal Defendant or another insurer, the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units or 1 year's imprisonment.

(3) A person must not give the commission, or the Nominal Defendant or another insurer, a document the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units or 1 year's imprisonment.

(4) Subsection (3) does not apply to a person who, when giving the document—

- (a) informs the commission, or the Nominal Defendant or other insurer, to the best of the person's ability, how it is false or misleading; and
- (b) gives the correct information to the commission, or the Nominal Defendant or other insurer, if the person has, or can reasonably obtain, the correct information.

(5) Subsection (3) does not require the commission, or the Nominal Defendant or another insurer, to tell someone that a document is false, misleading or incomplete, or to disclose information, if the probable effect would be to alert a person suspected of fraud to the suspicion.

(6) It is enough for a complaint against a person for an offence against subsection (2) or (3) to state the information or document was, without specifying which, ‘false or misleading’.

### *Division 6—Information from Commissioner of Police Service*

#### **87V Information from Commissioner of Police Service**

(1) The Commissioner of the Police Service may, on the insurance commissioner’s written request, give to the commission information in the possession of the Queensland Police Service that is mentioned in subsection (2) about a person the commission reasonably suspects to have committed an offence against this Act.

(2) The information that may be given is—

- (a) the person’s criminal history or part of the person’s criminal history; and
- (b) any brief of evidence compiled by the Queensland Police Service on anything mentioned in the person’s criminal history; and
- (c) any document about any complaint made by or against the person.

(3) For this section, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply.

(4) Information given to the commission by the Commissioner of the Police Service under this section—

- (a) must not be used for any purpose other than an investigation or prosecution under this Act; and
- (b) if not relevant to a suspected offence against this Act—must be disregarded by the commission and must not be used by the commission for any purpose.

***Division 7—Proceedings*****87W Proceedings**

(1) A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886* before a magistrate on the complaint of—

- (a) the commissioner; or
- (b) the Attorney-General; or
- (c) a person authorised by the commissioner or the Attorney-General to take the proceeding.

(2) The proceeding must start—

- (a) within 2 years after the commission of the offence; or
- (b) within 6 months after the commission of the offence comes to the knowledge of the complainant;

whichever is the later.

(3) A statement in a complaint that—

- (a) the complainant is authorised by the commissioner or the Attorney-General to take the proceeding; or
- (b) the commission of the alleged offence came to the knowledge of the complainant on a particular date;

is evidence of the fact stated.

***Division 8—Evidence*****87X Evidentiary certificates given by the commission and transport administration**

(1) The commission may issue a certificate certifying any 1 or more of the following matters—

- (a) that the commission made a specified decision under this Act on a specified date;
- (b) that the commission carried out a specified administrative act under this Act on a specified date;

- (c) that the commission gave a specified notice to a specified person in a specified way on a specified date;
- (d) that an address at which a specified notice was left, or to which it was sent, was the last address known to the commission of the person to whom the notice was to be given.

(2) Transport administration may issue a certificate certifying any 1 or more of the following matters—

- (a) that a specified vehicle was or was not registered at a specified time, or over a specified period;
- (b) that a specified vehicle was or was not insured under the statutory insurance scheme at a specified time, or over a specified period;
- (c) that a specified amount is, or was at a specified time, payable to transport administration as an insurance premium for CTP insurance for a specified vehicle;
- (d) that there was a specified deficiency in the amount received by transport administration on a specified date by way of an insurance premium for CTP insurance for a specified vehicle.

(3) A certificate under this section is admissible in civil or criminal proceedings as evidence of anything stated in the certificate.

(4) A document is admissible in legal proceedings and is to be taken, in the absence of contrary evidence, to be a certificate under this section if the document—

- (a) appears to be a certificate under this section; and
- (b) purports to be signed by a person authorised by the commission or transport administration (as the case requires) to issue the certificate.

## **PART 6—MISCELLANEOUS**

### **88 Information to be provided by licensed insurers**

(1) A licensed insurer must provide the commission with—

- (a) periodic returns, as required by regulation, containing the information required by regulation; and

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(b) other information—

- (i) about claims against the insurer (including claims arising before the commencement of this Act); or
- (ii) relevant in another way to the administration of this Act; that is required by regulation, or that the commission may require by written notice to the insurer.

(2) An insurer may, for example, be required to provide—

- (a) details of motor vehicle 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
- (c) information about whether liability was admitted by the insurer, when liability was admitted or denied and, if liability was admitted, the extent to which liability was admitted; and
- (d) information about the rehabilitation services made available to the claimant and the extent to which the rehabilitation services were used by the claimant; and
- (e) information about the costs of the insurer on claims, and how the costs are made up.

(3) The information—

- (a) must be provided by means of systems for the processing and transmission of information that comply with reasonable requirements imposed by the commission; and
- (b) must be provided in a form reasonably required by the commission.

(4) An insurer must not fail to comply with a requirement imposed under this section.

Maximum penalty—150 penalty units and a further 50 penalty units for each week until the requirement is complied with.

(5) A court that convicts a licensed insurer of an offence against this section may, by order, withdraw the licence.

**88A Commission's power to intervene to establish information processing systems**

(1) This section applies if—

- (a) the commission, by written notice given to a licensed insurer, requires the insurer to establish, within the reasonable time stated in the notice, systems for the processing and transmission of information that comply with specified reasonable requirements; and
- (b) the insurer fails to comply with the requirement within the stated time.

(2) The commission may engage contractors to establish the required systems for the processing and transmission of information and authorise them to enter the licensed insurer's premises when the premises are open for business to carry out the necessary work.

(3) The licensed insurer must—

- (a) allow an authorised contractor access to the insurer's premises and facilities for the purpose of establishing the required systems for the processing and transmission of information; and
- (b) must, at the request of an authorised contractor, provide cooperation and assistance the contractor reasonably needs to carry out the work effectively.

Maximum penalty—150 penalty units.

(4) The commission may recover the cost of work carried out under this section as a debt from the licensed insurer.

(5) A court that convicts a licensed insurer of an offence against this section may, by order, withdraw the licence.

**89 Register of claims**

(1) The commission must keep a register of claims.

(2) The register must contain information provided under this Act by insurers that the commission considers appropriate for inclusion in the register.

(3) The information contained in the register must be accessible to licensed insurers and others to the extent that the commission decides.



(4) However, information that would, if it became generally known, affect an insurer's competitive position must not be disclosed in a form that would enable the insurer's identification.

## **90 Transport administration to provide certain information**

(1) Transport administration must, on receipt of an application accompanied by the appropriate fee decided by transport administration, inform the applicant—

- (a) whether a motor vehicle mentioned in the application was insured under this Act as at a specified date; and
- (b) if so—the licensed insurer under the CTP insurance policy.

(2) A certificate given by a delegate of transport administration to the effect that a particular licensed insurer, or the Nominal Defendant, was, on a specified date, the insurer of a particular motor vehicle under the statutory insurance scheme must be accepted as evidence of the fact certified.

## **91 Insolvent insurers**

(1) If the commission publishes a gazette notice to the effect that a named insurer previously licensed under this Act became insolvent on a particular date, the insurer is presumed, for the purposes of this Act, to have become insolvent on that date.

(2) The liquidator of an insolvent insurer must at the commission's request give any information the commission requires about the stage reached by the insurer in processing claims before becoming insolvent and any other information reasonably required by the commission.

Maximum penalty—25 penalty units.

## **92 Disclosure of information**

(1) A person engaged in work related to the administration of the statutory insurance scheme, or claims made under the scheme, must not divulge information of a private or confidential nature acquired during the work other than as authorised or required by the terms of the person's employment or by law.

Maximum penalty—50 penalty units.

(2) This section does not prevent—

- (a) the exchange of information between insurers; or
- (b) any other form of disclosure authorised or required by the industry deed or regulation.

#### **94 Interference with certain documents**

A person must not, without proper reason, interfere with documents relevant to the selection of insurers under the statutory insurance scheme.

Maximum penalty—150 penalty units.

#### **95 Unauthorised policies**

A person other than a licensed insurer must not purport to issue a CTP insurance policy under this Act.

Maximum penalty—300 penalty units for each policy purportedly issued.

#### **97 CTP premiums not to be discounted etc.**

(1) A licensed insurer or a broker or other person acting for a licensed insurer must not—

- (a) discount, reduce, waive, or defer payment of the premium on a CTP insurance policy; or
- (b) offer to discount, reduce, waive, or defer payment of the premium on a CTP insurance policy; or
- (c) give or offer to give a rebate on the premium on a CTP insurance policy.

Maximum penalty—300 penalty units.

(2) A licensed insurer or a broker or other person acting for a licensed insurer must not pay or subsidise, or offer to pay or subsidise, any fee payable on registration, or renewal of registration, of a motor vehicle by a person who has selected, or proposes to select, the licensed insurer to be the insurer under a CTP insurance policy for the vehicle.

Maximum penalty—300 penalty units.

(3) A licensed insurer, a broker or other person (whether acting for a licensed insurer or not) must not encourage another to make a payment calculated to result in a reduced insurer's premium for an insurer.

Maximum penalty—300 penalty units.

(4) A licensed insurer does not contravene this section by accepting a reduced insurer's premium in circumstances where the reduced payment is authorised under this Act.

(5) A court that convicts a licensed insurer of an offence against this section may, by order, withdraw the licence.

## **99 Penalties for offences**

Any monetary penalty recovered for an offence against this Act must be paid into the Motor Accident Insurance Fund.

## **100 Regulations**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may create offences and prescribe penalties of not more than 60 penalty units for each offence.

## **101 Periodical reviews**

(1) Whenever it appears necessary to review this Act to ensure that it is adequately meeting community expectations and its provisions remain appropriate, the Minister must have such a review carried out.

(2) The Minister must cause a report of the outcome of a review under subsection (1) to be laid before the Legislative Assembly.

## **PART 7—TRANSITIONAL PROVISIONS**

### ***Division 1—Provisions for Act before commencement of Motor Accident Insurance Amendment Act 1999 and a related matter***

#### **102 Insurance Act 1960 references**

In an Act or document, a reference to the *Insurance Act 1960* may, if the context permits, be taken to be a reference to this Act.

#### **103 Motor Vehicles Insurance Act 1936 references**

In an Act or document, a reference to the *Motor Vehicles Insurance Act 1936* may, if the context permits, be taken to be a reference to this Act.

#### **104 Personal injury claims**

(1) A contract of insurance in force under the former Act immediately before the commencement of this Act continues in force until the earlier of the following—

- (a) the contract is replaced by a CTP insurance policy under this Act;
- (b) 30 days after the end of the registration period to which it related.

(2) If personal injury arises out of a motor vehicle accident happening before the commencement of this Act, a claim for the personal injury must be dealt with as if this Act had not been enacted.

(3) If personal injury arises out of a motor vehicle accident happening on or after the commencement of this Act, a claim for the personal injury must be dealt with under this Act (even though the accident may have happened while a policy of insurance issued under the former Act remains in force).

(4) This section is enacted to remove any doubt and does not affect the operation of the *Acts Interpretation Act 1954*, section 20A<sup>12</sup> in relation to section 104 of this Act as originally enacted after the expiry of that section on 31 December 1995.

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<sup>12</sup> *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional or validating effect etc.)

**106 Nominal Defendant**

(1) The Nominal Defendant under this Act succeeds to rights and liabilities of the Nominal Defendant under the former Act for personal injury arising out of motor vehicle accidents that happened before the commencement of this Act.

(2) If the insurer liable under a contract of insurance issued under the former Act becomes insolvent—

- (a) the Nominal Defendant succeeds to the insolvent insurer's rights and liabilities under the contract of insurance; and
- (b) the provisions of this Act that apply to the insolvency of an insurer under a CTP insurance policy apply with any changes prescribed by regulation.

(3) The Motor Vehicle Insurance Nominal Defendant Fund established under the former Act is closed and the balance standing to its credit at the commencement of this Act must be dealt with as follows—

- (a) an amount that is, in the State Actuary's opinion, enough to meet liabilities of the Nominal Defendant under this section must be transferred to the Nominal Defendant Fund under this Act;
- (b) any balance must be transferred to the Motor Accident Insurance Fund under this Act.

(4) If the amount paid to the credit of the Nominal Defendant Fund proves insufficient to meet the liabilities of the Nominal Defendant under this section, the commissioner must make payments from the Motor Accident Insurance Fund to meet the deficiency, but the total payments from the Motor Accident Insurance Fund under this section can not be more than the amount transferred to the fund under subsection (3).

(5) Section 33(5) further limits the total payments that may be made under subsection (4) from the Motor Accident Insurance Fund.

***Division 2—Provision for Motor Accident Insurance Amendment Act 1999***

**107 Regulation for assessment period starting before 30 June 1999**

(1) Section 15(2) to (4) does not apply to a regulation under section 15(1) fixing the levies, administration fee and insurance premiums for an assessment period starting before 30 June 1999.

(2) A regulation mentioned in subsection (1) is valid even though no recommendations are made to the Minister under section 12(2) for the assessment period to which the regulation relates.

***Division 3—Provisions for Motor Accident Insurance Amendment Act 2000***

**108 Application of amendments made by the Motor Accident Insurance Amendment Act 2000 to motor vehicle accident claims**

(1) In this section—

“**relevant amendment**” means an amendment to this Act made by the *Motor Accident Insurance Amendment Act 2000*.

(2) This Act, as amended by a relevant amendment—

- (a) applies to a motor vehicle accident claim arising from a motor vehicle accident that happens on or after the commencement of the relevant amendment; and
- (b) governs the terms and conditions of a CTP insurance policy under this Act, in so far as it is relevant to any such motor vehicle accident claim, irrespective of whether the policy came into force before or after the commencement of the relevant amendment.

(3) This Act, as in force before the commencement of a relevant amendment, applies to a motor vehicle accident claim arising from a motor vehicle accident that happened before the commencement of the relevant amendment.

**109 Special provision about financial years**

For this Act, the period commencing on 1 July 2000 and ending on 30 September 2000 and the period commencing on 1 October 2000 and ending on 30 June 2001 are taken to be separate financial years.

**110 Ratification of action taken in anticipation of amendments made by the Motor Accident Insurance Amendment Act 2000**

(1) This section applies to anything done with a view to—

- (a) fixing levies for the financial year commencing on 1 October 2000; or

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- (b) fixing the administration fee for the financial year commencing on 1 October 2000; or
- (c) setting insurer's premiums for the assessment period commencing on 1 October 2000.

(2) Anything done in anticipation of amendments made by the *Motor Accident Insurance Amendment Act 2000* that could have been validly done under this Act assuming that Act had been enacted and the relevant amendments had commenced when the thing was done is taken to have been validly done under this Act.

## SCHEDULE

### POLICY OF INSURANCE

section 23(1)

#### 1 Extent of insurance cover

(1) This policy insures against liability for personal injury caused by, through or in connection with the insured motor vehicle anywhere in Australia.

(2) This policy extends to liability for personal injury caused by, through or in connection with a trailer attached to the insured motor vehicle or that results from the trailer running out of control after becoming accidentally detached from the insured motor vehicle.

(3) The liability mentioned in subsection (1) or (2)—

- (a) is a liability for personal injury to which the *Motor Accident Insurance Act 1994* applies;<sup>13</sup> and
- (b) includes the liability of a tortfeasor to make a contribution to another tortfeasor who is also liable for the personal injury.

(4) This policy does not insure a person (the “**injured person**”) against injury, damage or loss—

- (a) that arises independently of any wrongful act or omission; or
- (b) to the extent that the injury loss or damage is attributable to the injured person’s own wrongful act or omission.

#### 2 Insured person

The person insured by this policy is the owner, driver, passenger or other person whose wrongful act or omission in respect of the insured motor vehicle causes the injury to someone else and any person who is vicariously liable for the wrongful act or omission.

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13 See section 5 of the Act.



## SCHEDULE (continued)

**3 Exclusions**

(1) This policy does not insure an employer against a liability to pay worker's compensation.

(2) This policy does not insure an employer against a liability to pay damages for injury to an employee if—

- (a) the injury arises from the employer's failure to provide a safe system of work for the employee or the employer's breach of some other duty of care to the employee; and
- (b) neither the employer nor another employee of the employer was the driver of the motor vehicle at the time of the motor vehicle accident out of which the injury arose.

(3) This policy does not insure against a liability to pay exemplary, punitive or aggravated damages.

(4) This policy does not insure against a liability to pay damages for an injury that arises gradually from a series of incidents.

## ENDNOTES

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 28 June 2002. Future amendments of the Motor Accident Insurance Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 September 1994
1A	to Act No. 57 of 1995	15 August 1996
1B	to Act No. 54 of 1996	20 February 1997
2	to Act No. 54 of 1996	28 July 1997
2A	to Act No. 57 of 1997	14 November 1997
3	to Act No. 12 of 1999	7 May 1999
3A	to Act No. 76 of 1999	4 January 2000
3B	to Act No. 17 of 2000	6 October 2000
4	to Act No. 52 of 2000	1 December 2000
4A	to Act No. 45 of 2001	6 August 2001
4B	to Act No. 85 of 2001	14 December 2001

## 5 List of legislation

### **Motor Accident Insurance Act 1994 No. 9**

date of assent 7 March 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1994 (1994 SL No. 175)

amending legislation—

### **Treasury Legislation Amendment Act (No. 2) 1994 No. 75 pts 1, 6**

date of assent 1 December 1994

commenced on date of assent

### **Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2**

date of assent 28 November 1995

commenced on date of assent

### **Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

### **Motor Accident Insurance Legislation Amendment Act 1996 No. 53 pts 1–2**

date of assent 20 November 1996

ss 1–2 commenced on date of assent

ss 5(1), 10 commenced 1 September 1994 (see s 2(1))

remaining provisions commenced 6 December 1996 (1996 SL No. 362)

### **Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch**

date of assent 20 November 1996

ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 June 1997 (1997 SL No. 128)

**Treasury Legislation Amendment Act 1997 No. 57 s 1 pt 5**

date of assent 16 October 1997  
 s 30 commenced 1 September 1994 (see s 2)  
 remaining provisions commenced on date of assent

**Motor Accident Insurance Amendment Act 1999 No. 12**

date of assent 30 March 1999  
 commenced on date of assent

**Motor Accident Insurance Amendment Act (No. 2) 1999 No. 76**

date of assent 14 December 1999  
 commenced on date of assent

**Motor Accident Insurance Amendment Act 2000 No. 17 (this Act is amended, see amending legislation below)**

date of assent 8 June 2000  
 ss 1–2 commenced on date of assent  
 ss 32 (in so far as it ins new ss 55A, 55C), 34, 48 commenced 1 July 2000  
 (see s 2(2))  
 remaining provisions commenced 1 October 2000 (see s 2(1))  
 amending legislation—

**Superannuation and other Legislation Amendment Act 2000 No. 52 ss 1, 2(4), 48 sch (amends 2000 No. 17 above)**

date of assent 17 November 2000  
 ss 1–2 commenced on date of assent  
 sch commenced 8 June 2000 (see s 2(4))

**Superannuation and Other Legislation Amendment Act 2000 No. 52 ss 1, 48 sch**

date of assent 17 November 2000  
 commenced on date of assent

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001  
 ss 1–2 commenced on date of assent  
 sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)  
 remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

**Motor Accident Insurance Amendment Act 2001 No. 85**

date of assent 3 December 2001  
 commenced on date of assent

**Personal Injuries Proceedings Act 2002 No. 24 ss 1–2, 78–80**

date of assent 20 June 2002  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 18 June 2002 (see s 2)

## 6 List of annotations

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- s 4
- def “**act of terrorism**” ins 2001 No. 85 s 2A
  - def “**affordability index**” ins 2000 No. 17 s 5(2)
  - def “**assessment period**” ins 1999 No. 12 s 3
    - sub 2000 No. 17 s 5 (amd 2000 No. 52 s 48 sch)
  - def “**average weekly earnings**” ins 2000 No. 17 s 5(2)
  - def “**claimant**” sub 2000 No. 17 s 5
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  - def “**compulsory conference**” ins 2000 No. 17 s 5(2)
  - def “**costs**” sub 2000 No. 17 s 5
  - def “**costs statement**” ins 2000 No. 17 s 5(2)
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  - def “**GST**” ins 2000 No. 17 s 5(2)
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  - def “**insurance premium**” ins 2000 No. 17 s 5(2)
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  - def “**licence**” amd 2001 No. 85 s 8
  - def “**mandatory final offer**” ins 2000 No. 17 s 5(2)
  - def “**mobile machinery**” ins 2000 No. 17 s 5(2)
  - def “**mobile machinery or equipment**” om 2000 No. 17 s 5(1)
  - def “**motor vehicle**” sub 2000 No. 17 s 5
  - def “**motor vehicle accident**” sub 2000 No. 17 s 5
  - def “**non-medicinal drug**” ins 2000 No. 17 s 5(2)
  - def “**officer**” amd 2001 No. 45 s 29 sch 3
  - def “**official panel of medical experts**” ins 2000 No. 17 s 5(2)
  - def “**public place**” ins 1996 No. 53 s 4(2)
    - sub 2000 No. 17 s 5
  - def “**re-assessed period**” ins 1999 No. 12 s 3
    - om 2000 No. 17 s 5(1) (amd 2000 No. 52 s 48 sch)
  - def “**registered operator**” ins 2000 No. 17 s 5(2)
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**Recommendations about levies and administration fee**

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**Fixing levies and administration fee**

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**Report and recommendations when costs of insurance exceed the affordability index**

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s 102 prev s 102 om R1 (see RA s 40)  
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s 103 prev s 103 om R1 (see RA s 40)  
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**Personal injury claims**

s 104 prev s 104 exp 31 December 1995 (see s 104(4))  
pres s 104 ins 1997 No. 54 s 29

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s 105 exp 31 December 1994 (see s 105(2))

**Nominal Defendant**

s 106 amd 1997 No. 57 s 30; 2001 No. 85 s 7

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s 107 prev s 107 exp 31 December 1995 (see s 107(2))  
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div hdg ins 2000 No. 17 s 48

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s 108 prev s 108 exp 1 July 1995 (see s 108(2))  
pres s 108 ins 2000 No. 17 s 48

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**s 109** prev s 109 exp 1 June 1995 (see s 109(3))  
(1) AIA s 20A applies (see s 109(2))  
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**Ratification of action taken in anticipation of amendments made by the Motor  
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**s 110** ins 2000 No. 17 s 48

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**s 2** amd 1996 No. 53 s 10

**Exclusions**

**s 3** amd 2000 No. 17 s 49