

Queensland



**MOTOR ACCIDENT
INSURANCE AMENDMENT
BILL 2000**

Queensland



MOTOR ACCIDENT INSURANCE AMENDMENT BILL 2000

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2000

A BILL

FOR

An Act to amend the Motor Accident Insurance Act 1994

Motor Accident Insurance Amendment

The Parliament of Queensland enacts—

1

Short title

2

Clause **1.** This Act may be cited as the *Motor Accident Insurance Amendment Act 2000*.

3

4

Commencement

5

Clause **2.(1)** This Act commences on 1 October 2000.

6

(2) However, the following provisions commence on 1 July 2000—

7

(a) section 32 in so far as it inserts new sections 55A and 55C;

8

(b) section 34;

9

(c) section 48.

10

Act amended

11

Clause **3.** This Act amends the *Motor Accident Insurance Act 1994*.

12

Amendment of s 3 (Objects)

13

Clause **4.** Section 3, after paragraph (a)—

14

insert—

15

‘(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’.

16

17

18

Amendment of s 4 (Definitions)

19

Clause **5.(1)** Section 4, definitions “costs”, “mobile machinery or equipment”, “motor vehicle”, “motor vehicle accident”, “public place”, “registration” and “road”—

20

21

22

omit.

23

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(2) Section 4—	1
<i>insert—</i>	2
‘ “affordability index” means 45% of average weekly earnings.	3
“assessment period” see section 13(2).	4
“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, ¹ averaged over the last 4 quarters for which the statistician’s report is available.	5 6 7 8 9
“class” —	10
(a) of CTP insurance (or CTP insurance policies)—means CTP insurance (or CTP insurance policies) for a particular class of motor vehicles; or	11 12 13
(b) of motor vehicles—means a class of motor vehicles created by classification under a regulation.	14 15
“compulsory conference” see section 51A(1).	16
“costs” —	17
(a) when used in reference to legal costs, includes disbursements; and	18
(b) when used in reference to the costs of an insurer on a claim, includes—	19 20
(i) the amount paid out by the insurer on the claim to the claimant or for the claimant’s benefit, including—	21 22
(A) the cost to the insurer of providing rehabilitation services in connection with the claim; and	23 24
(B) the cost to the insurer of paying private hospital, medical and pharmaceutical expenses in connection with the claim; and	25 26 27
(ii) the cost to the insurer of investigating the claim and of litigation related to the claim (but not the insurer’s general	28 29

¹ The publication is currently entitled ‘Average Weekly Earnings States and Australia’.

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administration costs).	1
“costs statement” see section 51B(6)(e).	2
“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.	3 4 5
“GST” means the tax payable under the GST law.	6
“GST law” means—	7
(a) <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cwlth);	8
and	9
(b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods and services.	10 11
“GVM” means gross vehicle mass.	12
“insurance premium” means the gross premium for a CTP insurance policy (including levies and administration fee).	13 14
“insurer’s premium” means an insurer’s consideration for providing insurance under a CTP insurance policy.	15 16
“mandatory final offer” see section 51C(2).	17
“mobile machinery” has the meaning given by the <i>Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999</i> .	18 19
“motor vehicle” means a vehicle for which registration is required under the <i>Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999</i> and includes a trailer.	20 21 22
“motor vehicle accident” means an incident from which a liability for personal injury arises that is covered by insurance under the statutory insurance scheme.	23 24 25
“non-medicinal drug” means a drug other than one genuinely and lawfully consumed for medical or therapeutic purposes.	26 27
“official panel of medical experts” see section 45A(1)(a).	28
“public place” has the meaning given by the <i>Transport Operations (Road Use Management) Act 1995</i> .	29 30
“registration” , of a motor vehicle, includes a permit, plate or other authorisation under the <i>Transport Operations (Road Use</i>	31 32

Motor Accident Insurance Amendment

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 of that regulation. 1
2
3

“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. 4
5
6

“road” has the meaning given by the *Transport Operations (Road Use Management) Act 1995*.’. 7
8

Insertion of new s 4A 9

Clause 6. After section 4— 10
insert— 11

‘References to insurer’s premium, a fee or costs 12

‘4A. 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.’. 13
14
15
16
17

Amendment of s 5 (Application of this Act) 18

Clause 7. Section 5(3)(a)— 19
omit, insert— 20

‘(a) a tractor, backhoe, bulldozer, end-loader, forklift, industrial crane or hoist, or other mobile machinery; or’. 21
22

Amendment of s 10 (Commission’s functions) 23

Clause 8.(1) Section 10(1)(d)— 24
omit, insert— 25

‘(d) fix for each class of CTP insurance the range within which an insurer’s premium must fall; and 26
27

(da) recommend the levies and the administration fee payable under 28

Motor Accident Insurance Amendment

	this Act; and’.	1
	(2) Section 10(1)(f)—	2
	<i>omit, insert—</i>	3
	‘(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’.	4 5 6
	(3) After section 10(1)(h)—	7
	<i>insert—</i>	8
	‘(ha) establish and maintain a call centre from which the public may obtain information on the statutory insurance scheme; and’.	9 10
	(4) Section 10(1)(k)—	11
	<i>omit, insert—</i>	12
	‘(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’.	13 14 15
	Replacement of s 11 (Advisory committee)	16
Clause	9. Section 11—	17
	<i>omit, insert—</i>	18
	‘Advisory committees	19
	‘ 11.(1) The commission may establish 1 or more advisory committees to advise on the exercise of the commission’s statutory functions.	20 21
	‘ (2) The matters on which an advisory committee may provide advice are to be decided by the commission with the approval of the Minister.	22 23
	‘ (3) An advisory committee is to consist of persons appointed by the Minister on the commission’s nomination.	24 25
	‘ (4) The terms on which the members of an advisory committee hold office are to be decided by the Minister.’.	26 27

	Replacement of pt 2, div 3 (Recommendation and fixing of levies, administration fee and insurance premiums)	1 2
Clause	10. Part 2, division 3—	3
	<i>omit, insert—</i>	4
	<i>‘Division 3—Insurance premiums</i>	5
	‘Insurance premiums	6
	‘12.(1) An insurance premium under the statutory insurance scheme consists of the following components—	7 8
	(a) the insurer’s premium;	9
	(b) the statutory insurance scheme levy;	10
	(c) the hospital and emergency services levy;	11
	(d) the Nominal Defendant levy;	12
	(e) the administration fee.	13
	‘(2) The insurer’s premium is the insurer’s consideration for providing the insurance.	14 15
	‘(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.	16 17 18 19
	‘(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—	20 21 22 23
	(a) are injured in motor vehicle accidents; and	24
	(b) make use of public hospital services and emergency services as a result of their injuries; and	25 26
	(c) are claimants or potential claimants under the statutory insurance scheme.	27 28
	‘(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	29 30

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the levy is fixed together with any shortfall from previous financial years.	1
‘(6) The administration fee is the fee payable to transport administration for work done in the administration of the statutory insurance scheme.	2 3
‘(7) The administration fee is a controlled receipt for the purposes of the <i>Financial Administration and Audit Act 1977</i> .	4 5
‘The insurer’s premium	6
‘13.(1) An insurer’s premium is to be set by each licensed insurer, within limits fixed by the commission, for each class of insurance.	7 8
‘(2) The premiums are to relate to a period (an “assessment period”) fixed under a regulation.	9 10
‘(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.	11 12
‘(4) If the registration period is more or less than 1 year, the insurer’s premium for the relevant CTP policy is—	13 14
(a) the proportion of the insurer’s premium for 1 year that the period of registration bears to 1 year; and	15 16
(b) an additional amount fixed on a basis prescribed under a regulation.	17 18
‘Premium rates	19
‘13A.(1) This section describes the process for setting the insurer’s premiums for each assessment period.	20 21
‘(2) The commission first fixes limits of insurer’s premium for each class of CTP insurance.	22 23
‘(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).	24 25
‘(4) Before the commission fixes the limits, the commission must invite written submissions from—	26 27
(a) licensed insurers on matters relevant to the fixing of the limits and, in particular, on—	28 29

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- (i) current factors and trends influencing the cost of insurance under the statutory insurance scheme; and 1
2
- (ii) any other factors that should, in the opinion of the insurers, influence the permissible range of insurers' premiums for the assessment period; and 3
4
5
- (b) major organisations representing motorists in Queensland. 6
- '(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. 7
8
9
10
- '(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— 11
12
13
14
15
- (a) fix the limits of insurer's premium for each class of CTP insurance; and 16
17
- (b) give each licensed insurer a written notice— 18
- (i) stating the limits fixed for each class of CTP insurance; and 19
- (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 20
21
22
- (iii) specifying other requirements with which the insurer's submission must comply. 23
24
- '(7) The premiums must be submitted in accordance with requirements specified in the notice within a time limit fixed under a regulation. 25
26
- '(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. 27
28
29
- '(9) On receipt of the notice from the insurer, the commission must, within a time limit fixed by a regulation— 30
31
- (a) record the premiums set by the insurer for the relevant assessment period for each class of CTP insurance; and 32
33

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- (b) give the insurer a written notice confirming the insurer's premiums for the relevant assessment period; and 1
2
- (c) notify transport administration of the premiums set by the insurer for the relevant assessment period. 3
4
- ‘(10) If a licensed insurer—** 5
- (a) fails to submit premiums for each class of CTP insurance as required by the commission; or 6
7
- (b) sets a premium outside the limits allowed by the commission; 8
- the commission may, by written notice to the insurer, withdraw the insurer's licence. 9
10
- ‘Recommendations about levies and administration fee** 11
- ‘14.(1) At least 4 months before the end of each financial year, the commission must make recommendations to the Minister on the amount of—** 12
13
14
- (a) the statutory insurance scheme levy for the next financial year; and 15
16
- (b) the hospital and emergency services levy for the next financial year; and 17
18
- (c) the Nominal Defendant levy for the next financial year; and 19
- (d) the administration fee for the next financial year. 20
- ‘(2) A levy or the administration fee may vary according to any 1 or more of the following factors—** 21
22
- (a) the class of CTP insurance; 23
- (b) the period of insurance; 24
- (c) any other factor stated in a regulation. 25
- ‘(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.** 26
27
28
29
30

‘Fixing levies and administration fee

‘14A.(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.

‘Report and recommendations when costs of insurance exceed the affordability index

‘15.(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

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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.’.

Amendment of s 20A (Temporary gratuitous insurance)

Clause 11. Section 20A(1), ‘*Transport Infrastructure (Roads) Regulation 1991*, section 44A’—

omit, insert—

‘*Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*, section 63’.

Replacement of s 21 (Selection of insurer)

Clause 12. Section 21—

omit, insert—

‘Selection of insurer

‘21.(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

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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

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- (b) the amount is to be applied as follows— 1
- (i) first to paying the registration fees and charges, the 2
administration fee and the levies; 3
- (ii) secondly to paying the remaining balance to the insurer. 4
- ‘(6) However, in a case to which subsection (5) applies, the CTP insurer 5
may recover, as a debt, from the registered operator of the motor vehicle the 6
difference between the insurer’s premium the insurer would have received if 7
the insurance premium had been paid in full and the amount actually 8
received by the insurer. 9
- ‘(7) The commission may— 10
- (a) fix tolerances for subsection (5); or 11
- (b) change or replace tolerances previously fixed for subsection (5). 12
- ‘(8) When the commission fixes the tolerances (or changes or replaces 13
tolerances previously fixed), the commission must give written notice of the 14
tolerances (or the new tolerances) to transport administration and all licensed 15
insurers. 16
- ‘(9) For this section— 17
- (a) a person is taken to have made a nomination in a way approved 18
by transport administration if the nomination is communicated to 19
transport administration in a way transport administration 20
considers acceptable; and 21
- (b) a person is taken to have lodged a certificate with transport 22
administration if the certificate or its contents are transmitted to, 23
and received by, transport administration in a way transport 24
administration considers acceptable. 25
- ‘(10) In this section— 26
- “**appropriate insurance premium**” means the gross insurance premium 27
calculated by reference to— 28
- (a) the period for which registration is to be granted or renewed; and 29
- (b) the class of motor vehicle; and 30
- (c) the insurer’s premium fixed by the insurer last selected under this 31
section for the relevant class of insurance.’. 32

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	Amendment of s 23 (Statutory policy of insurance)	1
Clause	13. Section 23(2) and (3)—	2
	<i>omit, insert—</i>	3
	‘ (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—	4 5
	(a) on the renewal of the registration or the grant of a permit allowing the vehicle to be driven on roads while unregistered;	6 7
	(b) on the expiry of 30 days from the end of the period of registration.	8 9
	‘ (3) However—	10
	(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	11 12 13 14
	(b) if a cancellation of registration takes effect during the period of grace, the period of grace ends when the cancellation takes effect; and	15 16 17
	(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	18 19 20
	(d) if the registered operator of the motor vehicle has selected a licensed insurer to become the insurer of the motor vehicle as from the end of the period of registration, the selected insurer becomes the insurer under the policy for the period of grace.	21 22 23 24
	‘ (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).’.	25 26 27 28 29

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	Amendment of s 25 (Motor vehicle must be insured under correct class)	1
		2
Clause	14.(1) Section 25(1), ‘20 penalty units’—	3
	<i>omit insert—</i>	4
	‘30 penalty units’.	5
	(2) After section 25(2)—	6
	<i>insert—</i>	7
	‘ (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.	8
		9
		10
		11
	Maximum penalty—30 penalty units.’.	12
	 Replacement of pt 3, div 3 (Financial obligations of insurers)	13
Clause	15. Part 3, division 3—	14
	<i>omit, insert—</i>	15
	<i>‘Division 3—Disbursement of gross insurance premiums</i>	16
	 ‘Disbursement of gross premiums by transport administration	17
	‘27.(1) Transport administration must in each week—	18
	(a) give the commission a return setting out, for the previous week—	19
	(i) the total amount received by way of insurance premiums;	20
	and	21
	(ii) the total amount received by way of insurer’s premium for each licensed insurer; and	22
		23
	(iii) the amount received by way of statutory insurance scheme levy; and	24
		25
	(iv) the amount received by way of hospital and emergency services levy; and	26
		27
	(v) the amount received by way of Nominal Defendant levy; and	28

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- (vi) the amount received by way of administration fee; and 1
- (b) pay to each licensed insurer the total amount received by way of 2
insurer's premium for the licensed insurer; and 3
- (c) pay to the commission the total amount received by way of levies 4
(including amounts received from licensed insurers for 5
transmission to the commission). 6
- '(2) Transport administration may retain the amount received by way of 7
administration fee. 8
- 'Disbursement of gross premiums by insurers who receive premiums 9
directly 10**
- '27A.(1) Within a week after transport administration notifies a licensed 11
insurer that it has received a certificate certifying payment of an insurance 12
premium to the licensed insurer, the licensed insurer must— 13
- (a) pay to transport administration (for transmission to the 14
commission) the component of the insurance premium consisting 15
of the levies; and 16
- (b) pay to transport administration the component of the insurance 17
premium consisting of the administration fee. 18
- Maximum penalty—150 penalty units. 19
- '(2) However, an insurer's liability to make payments under 20
subsection (1) to transport administration, and transport administration's 21
liability to pay insurer's premiums to the insurer, may be set off against 22
each other under an arrangement between transport administration and the 23
insurer (but such an arrangement is not to affect the extent of transport 24
administration's liability to pay levies to the commission). 25
- '(3) If an insurer fails to make a payment to transport administration 26
when required under this section, transport administration may recover the 27
amount as a debt, together with interest at a rate fixed under a regulation.'. 28

Motor Accident Insurance Amendment

	Amendment of s 30 (Transfer of CTP business)	1
Clause	16. Section 30(4)—	2
	<i>insert—</i>	3
	‘(d) if part of the transferor’s CTP business is transferred—the transfer is an adequate reason for withdrawing the licence.’ ² .	4 5
	 Amendment of s 31 (Principles for determining the insurer)	 6
Clause	17. Section 31(3) and (4)—	7
	<i>omit, insert—</i>	8
	‘(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.	9 10 11 12 13 14 15
	‘(4) However—	16
	(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	17 18 19 20
	(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.	21 22 23
	‘(5) In this section—	24
	“ 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).’.	25 26 27

² 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.

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	Replacement of s 34 (Duty to notify accidents)	1
Clause	18. Section 34—	2
	<i>omit, insert—</i>	3
	‘Duty to notify accidents to police	4
	‘34.(1) A person who proposes to claim damages for personal injury arising from a motor vehicle accident must ensure that appropriate notice of the accident has been given to a police officer.	5 6 7
	‘(2) Appropriate notice of a motor vehicle accident is—	8
	(a) the report of particulars required under the <i>Transport Operations (Road Use Management—Road Rules) Regulation 1999</i> , section 287; or	9 10 11
	(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.	12 13 14
	‘(3) A notice under this section must—	15
	(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	16 17 18
	(b) state the date, time and place of the accident and describe how it happened; and	19 20
	(c) identify all motor vehicles and drivers involved in the accident (as far as known to the intending claimant); and	21 22
	(d) state the names and residential addresses of all persons injured in the accident (as far as known to the intending claimant); and	23 24
	(e) state the names and residential addresses of all persons who witnessed the accident (as far as known to the intending claimant); and	25 26 27
	(f) state the general nature of the personal injury to the intending claimant.’.	28 29

Motor Accident Insurance Amendment

	Replacement of s 37 (Notice to be given by claimant)	1
Clause	19. Section 37—	2
	<i>omit, insert—</i>	3
	‘Notice of accident claim	4
	‘37.(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—	5 6 7 8
	(a) containing a statement of the information required under a regulation; and	9 10
	(b) authorising the insurer to have access to records and sources of information relevant to the claim specified under a regulation; and	11 12
	(c) accompanied by the documents required under a regulation.	13
	‘(2) The notice must be given—	14
	(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	15 16 17
	(b) in any other case—within the period ending on the earlier of the following dates—	18 19
	(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;	20 21 22
	(ii) 1 month after the claimant first consults a lawyer about the possibility of making a claim.	23 24
	‘(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.	25 26 27 28 29 30
	‘(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,	31 32

Motor Accident Insurance Amendment

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. 1
2

‘Additional information form 3

‘**37A.(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. 4
5
6

‘(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. 7
8
9

‘(3) The claimant must complete and return an additional information form to the insurer— 10
11

(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— 12
13
14

(i) 3 months after the motor vehicle accident; 15

(ii) 1 month after the date of the request; or 16

(b) in any other case—within the period ending on the later of the following dates— 17
18

(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; 19
20
21

(ii) 1 month after the date of the request.’. 22

Amendment of s 39 (Response to notice of claim) 23

Clause **20.(1)** Section 39(1), (2) and (3)— 24

omit, insert— 25

‘**39.(1)** If notice of a motor vehicle accident claim is given to an insurer under this division or purportedly under this division— 26
27

(a) the insurer must, within 14 days after receiving the notice give the claimant written notice— 28
29

Motor Accident Insurance Amendment

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|-------|---|--|
| (i) | stating whether the insurer is satisfied that the notice has been given as required under this division; and | 1
2 |
| (ii) | if the insurer is not satisfied—identifying the noncompliance and stating whether the insurer waives compliance with the requirements; and | 3
4
5 |
| (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 | 6
7
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| (iv) | stating whether the insurer is prepared (without admitting liability) to meet the reasonable and appropriate cost of the claimant’s rehabilitation; and | 12
13
14 |
| (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— | 15
16
17
18 |
| (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 | 19
20
21
22 |
| (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. | 23
24
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26 |
| | ‘(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. | 27
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| | ‘(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 | 34
35 |

Motor Accident Insurance Amendment

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.’.

(2) Section 39(5) and (6)—

omit, insert—

‘(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.’.

Amendment of s 41 (Insurer must attempt to resolve claim)

Clause **21.(1)** Section 41(1)(b)(ii) and (iii)—

omit, insert—

‘(ii) if contributory negligence is claimed—the degree of the contributory negligence expressed as a percentage; and’.

Motor Accident Insurance Amendment

(2) Section 41(7)— 1
omit. 2

Amendment of s 42 (Payment of medical expenses etc.) 3

Clause 22. Section 42(1)— 4
omit, insert— 5

‘42.(1) Once liability has been admitted, it is the duty of the insurer to 6
 make payments to or for the claimant for private hospital, medical and 7
 pharmaceutical expenses reasonably and appropriately incurred because of 8
 the injury or a proportionate part of the expenses reflecting the extent of the 9
 insurer’s responsibility (assuming the claimant to be guilty of contributory 10
 negligence as asserted by the insurer).’ 11

Amendment of s 45 (Duty of claimant to cooperate with insurer) 12

Clause 23.(1) Section 45(1) and (2)— 13
omit, insert— 14

‘45.(1) A claimant must cooperate with the insurer and, in particular— 15

(a) must provide the insurer with copies of reports and other 16
 documentary material (including written statements made by the 17
 claimant or by witnesses) in the claimant’s possession about the 18
 circumstances of the accident or the claimant’s medical condition 19
 or prospects of rehabilitation; and 20

(b) must give information reasonably requested by the insurer 21
 about— 22

(i) the circumstances of the accident out of which the claim 23
 arose; and 24

(ii) the nature of the injuries resulting from the accident and of 25
 any consequent disabilities and financial loss; and 26

(iii) if applicable—the medical treatment and rehabilitation 27
 services the claimant has sought or obtained; and 28

(iv) the claimant’s medical history (as far as it is relevant to the 29
 claim), and any other claims for compensation for personal 30

Motor Accident Insurance Amendment

	injury made by the claimant.	1
	‘(2) The claimant must—	2
	(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	3 4 5 6 7
	(b) respond to a request under subsection (1)(b) within 1 month after receiving it.’.	8 9
	(2) Section 45(4), (5) and (6)—	10
	<i>omit.</i>	11
	Insertion of new s 45A	12
Clause	24. After section 45—	13
	<i>insert—</i>	14
	‘Panels of recognised medical experts	15
	‘45A.(1) The commission—	16
	(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	17 18 19
	(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.	20 21 22
	‘(2) In deciding on the composition of the panel, the commission—	23
	(a) must consult with the professional bodies with which consultation is required under a regulation; and	24 25
	(b) may only include an expert on the panel if—	26
	(i) the expert’s inclusion is endorsed by the relevant professional bodies; or	27 28
	(ii) the commission is satisfied there is good reason for	29

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inclusion of the expert on the panel despite the absence of
endorsement by the relevant professional bodies.’.

1
2

Amendment of s 46 (Claimant and insurer may jointly arrange for expert report)

3
4

Clause 25. Section 46(5)—
omit.

5
6

Insertion of new ss 46A and 46B

7

Clause 26. After section 46—
insert—

8
9

‘Examination of claimant by medical expert in absence of agreement between the parties

10
11

‘**46A.(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.

12
13
14

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

15
16

(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

17
18

(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.

19
20
21
22

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

23
24

‘**(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.

25
26
27

‘**(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.

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29
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‘Costs of obtaining expert reports where reports obtained by agreement 1
2

‘46B.(1) If an expert report is obtained by agreement between the 3
claimant and the insurer, and the claimant is liable for the cost of obtaining 4
the report, the insurer must, at the claimant’s request, reimburse the 5
claimant for the reasonable cost of obtaining the report. 6

‘(2) However, a claimant’s right to reimbursement under this section is 7
subject to the terms of any agreement between the claimant and the insurer. 8

‘(3) If the insurer is entitled to costs, the costs may (subject to the rules 9
on which costs are to be awarded) include the cost of reimbursing the 10
claimant for the cost of obtaining an expert report or expert reports under 11
this section.’. 12

**Replacement of s 50 (Court’s power to enforce compliance with 13
Division)** 14

Clause 27. Section 50— 15

omit, insert— 16

‘Division 4A—Enforcement of divisions 2, 3 and 4 17

‘Court’s power to enforce compliance with divs 2, 3 and 4 18

‘50.(1) If a claimant fails to comply with a duty imposed under 19
division 2, 3 or 4, the court may, on the insurer’s application, order the 20
claimant to take specified action to remedy the default within a time 21
specified by the court. 22

‘(2) If an insurer fails to comply with a duty imposed under division 3 or 23
4, the court may, on the claimant’s application, order the insurer to take 24
specified action to remedy the default within a time specified by the court. 25

‘(3) The court may make consequential or ancillary orders.’. 26

	Amendment of s 51 (Obligation to provide rehabilitation services)	1
Clause	28.(1) Section 51(3) and (4)—	2
	<i>omit, insert—</i>	3
	‘ (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 5 6 7
	‘ (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.’	8 9 10 11 12 13
	(2) Section 51(5)—	14
	<i>omit, insert—</i>	15
	‘ (5) The claimant may, if not satisfied that the rehabilitation services made available under this section are reasonable and appropriate—	16 17
	(a) apply to the commission to appoint a mediator to help resolve the questions between the claimant and the insurer; or	18 19
	(b) apply to the court to decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate.	20 21
	‘ (5A) An application for appointment of a mediator under subsection (5)(a) must—	22 23
	(a) be made in writing; and	24
	(b) give details of any attempts made by the applicant to resolve the matter in dispute.	25 26
	‘ (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.	27 28 29
	‘ (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.	30 31 32

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- ‘**(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.’. 1
2
3
- (3)** Section 51(6), (7) and (8)— 4
omit, insert— 5
- ‘**(6)** The insurer must bear (or reimburse) the cost of providing rehabilitation services under this section unless the insurer’s liability is reduced— 6
7
8
- (a) by agreement with the claimant; or 9
(b) by order of the court under subsection (8). 10
- ‘**(7)** The insurer may, if of the opinion that the cost of rehabilitation services is unreasonable— 11
12
- (a) apply to the commission to appoint a mediator to help resolve the questions between the claimant and the insurer; or 13
14
(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. 15
16
17
18
- ‘**(7A)** An application for appointment of a mediator under subsection (7)(a) must— 19
20
- (a) be made in writing; and 21
(b) give details of any attempts made by the applicant to resolve the matter in dispute. 22
23
- ‘**(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. 24
25
26
- ‘**(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. 27
28
29
- ‘**(8)** On an application under subsection (7)(b), the court may decide the questions raised on the application and make consequential orders and directions.’. 30
31
32

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(4) Section 51(9)—

omit, insert—

‘(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.’

	Insertion of new pt 4, div 5A	1
Clause	29. After section 51—	2
	<i>insert—</i>	3
	<i>‘Division 5A—Compulsory conference</i>	4
	‘Compulsory conference	5
	‘51A.(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”).	6 7 8
	‘(2) Either party may call the compulsory conference—	9
	(a) at a time and place agreed between both parties; or	10
	(b) if the relevant date has passed—at a reasonable time and place nominated by the party calling the conference.	11 12
	‘(3) For subsection (2)(b), the relevant date is—	13
	(a) the date falling 6 months after the claimant gave notice to the insurer of the claim; or	14 15
	(b) if the insurer required additional information, the later of the following—	16 17
	(i) the date falling 6 months after the claimant gave notice to the insurer of the claim;	18 19
	(ii) the date falling 1 month after the claimant gave the insurer the completed additional information form.	20 21
	‘(4) The parties may for good reason dispense with the compulsory conference by agreement.	22 23
	‘(5) The court may, on application by a party—	24
	(a) fix the time and place for the compulsory conference; or	25
	(b) dispense with the compulsory conference for good reason;	26
	and make any other orders the court considers appropriate in the circumstances.	27 28
	‘(6) In considering whether to dispense with the compulsory conference,	29

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the court must take into account the extent of compliance by the parties with their respective obligations related to the claim.	1 2
‘Procedure at conference	3
‘51B.(1) The compulsory conference may be held with a mediator if both parties agree.	4 5
‘(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.	6 7
‘(3) The mediator must be a person independent of the parties—	8
(a) agreed to by the parties; or	9
(b) nominated by the registrar of the court on application under subsection (4).	10 11
‘(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.	12 13 14 15
‘(5) At least 7 days before the compulsory conference is held, each party must give the other party—	16 17
(a) copies of all documents not yet given to the other party that are relevant to the claim; and	18 19
(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	20 21
(c) details of the party’s legal representation; and	22
(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.	23 24 25
‘(6) A certificate of readiness must state that—	26
(a) the party is in all respects ready for the conference and the trial; and	27 28
(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	29 30 31

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- (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

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attempt to settle the claim. 1

‘(11) The compulsory conference may be conducted, if the parties agree, 2
by telephone, closed-circuit television or another form of communication 3
allowing contemporaneous and continuous communication between the 4
parties. 5

‘(12) The parties may, by agreement, change the time or place for 6
holding a compulsory conference or adjourn a compulsory conference from 7
time to time and from place to place. 8

**‘Parties to exchange mandatory final offers if claim not settled at 9
compulsory conference 10**

‘51C.(1) If a motor vehicle accident claim is not settled at the 11
compulsory conference, each party must (unless the court has dispensed 12
with this obligation) exchange written final offers— 13

(a) at the conference; or 14

(b) if the conference has been dispensed with—within 14 days after 15
the date of the agreement or order dispensing with the conference. 16

‘(2) A written final offer required under subsection (1) is called a 17
“**mandatory final offer**”. 18

‘(3) A mandatory final offer for \$50 000 or less is to be exclusive of 19
costs. 20

‘(4) If a mandatory final offer is for more than \$30 000 but not more 21
than \$50 000, and is accepted, costs are to be calculated and paid on a basis 22
(but subject to limits) stated under a regulation. 23

‘(5) Even though an insurer denies liability altogether, the insurer must 24
nevertheless make a mandatory final offer but, in that event, the offer is to 25
be expressed as an offer of \$nil. 26

‘(6) A mandatory final offer must remain open for 14 days and 27
proceedings must not be started while the offer remains open. 28

‘(7) If the claimant brings a proceeding in a court based on a motor 29
vehicle accident claim, the claimant must, at the start of the proceeding, file 30
at the court a sealed envelope containing a copy of the claimant’s mandatory 31
final offer. 32

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‘(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. 1
2
3

‘(9) The court must not read the mandatory final offers until it has decided the claim. 4
5

‘(10) However, the court must (where relevant) have regard to the mandatory final offers in making a decision about costs. 6
7

‘(11) The court may, on application by a party, dispense with the obligation to make mandatory final offers. 8
9

‘Time for bringing action 10

‘51D.(1) An action for damages should be started in the court— 11

(a) within 60 days after the conclusion of the compulsory conference; 12
or 13

(b) within a further period— 14

(i) agreed by the parties within the 60-day period mentioned in paragraph (a); or 15
16

(ii) fixed by the court on an application made by the claimant within the 60-day period mentioned in paragraph (a). 17
18

‘(2) If the parties or the court dispenses with the compulsory conference, an action for damages should be started in the court— 19
20

(a) within 60 days after the later of the following— 21

(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; 22
23
24
25

(ii) the date of the agreement or order dispensing with the conference; or 26
27

(b) within a further period— 28

(i) agreed by the parties within the 60-day period mentioned in paragraph (a); or 29
30

(ii) fixed by the court on an application made by the claimant 31

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within the 60-day period mentioned in paragraph (a). 1

‘(3) However, if the court dispenses with the obligation to make 2
mandatory final offers, an action for damages should be started in the court 3
within a period fixed by the court when giving the dispensation or later. 4

‘(4) The expiry of the time within which an action should be started 5
under subsection (1), (2) or (3) does not prevent the claimant from starting 6
the action but— 7

(a) the court may (unless the claimant establishes a reasonable excuse 8
for the delay) order the claimant to pay, in any event, the insurer’s 9
costs arising out of the delay; and 10

(b) the court may, on the insurer’s application, make an order fixing a 11
time limit within which the action must be started. 12

‘(5) If the claimant fails to start an action in the court within a time limit 13
fixed under subsection (4)(b), the claim is barred.’. 14

Insertion of new s 52B 15

Clause 30. After section 52A— 16
insert— 17

‘Exclusion of summary judgment on the basis of admissions 18

‘52B.(1) In an action for damages for personal injury arising out of a 19
motor vehicle accident, summary judgment is not to be given on the basis 20
of the defendant’s admissions. 21

‘(2) However, this section does not prevent a court from giving a 22
judgment by consent.’. 23

Amendment of s 55 (Awards of exemplary damages) 24

Clause 31.(1) Section 55, heading, after ‘exemplary’— 25
insert— 26
‘, punitive or aggravated’. 27

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	(2) Section 55, ‘exemplary or punitive’—	1
	<i>omit, insert</i> —	2
	‘exemplary, punitive or aggravated’.	3
	Insertion of new ss 55A–55F	4
Clause	32. After section 55—	5
	<i>insert</i> —	6
	‘Damages for loss of earnings or earning capacity	7
	‘55A.(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).	8 9 10
	‘(2) The limit is a rate of 3 times average weekly earnings per week.	11
	‘Discount rate to be applied in calculating the present value of future loss	12 13
	‘55B. If—	14
	(a) a claimant is to be compensated for future expenditure or loss; and	15 16
	(b) an actuarial multiplier is to be used to calculate the present value of future loss;	17 18
	a discount rate of 5% is to be applied in determining the actuarial multiplier.	19
	‘Damages for loss of consortium or loss of servitium	20
	‘55C.(1) A court must not award damages for loss of consortium or loss of servitium unless—	21 22
	(a) the injured person died as a result of injuries suffered in the motor vehicle accident; or	23 24
	(b) general damages for the injured person are assessed (before allowing for contributory negligence) at \$30 000 or more.	25 26
	‘(2) The court must not assess damages for loss of servitium above the	27

Motor Accident Insurance Amendment

limit fixed by subsection (3).	1
‘(3) The limit is 3 times average weekly earnings per week.	2
‘Damages for gratuitous services	3
‘55D.(1) Damages are not to be awarded for gratuitous services unless—	4
(a) the services are necessary; and	5
(b) the need for the services arose out of the personal injury suffered in the motor vehicle accident.	6 7
‘(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.	8 9 10
‘(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.	11 12 13
‘(4) In assessing damages for gratuitous services, a court must take into account—	14 15
(a) any offsetting benefit the service provider obtains through providing the services; and	16 17
(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.	18 19 20
‘Interest	21
‘55E.(1) Interest awarded on damages compensating past monetary loss—	22 23
(a) must not exceed interest at the appropriate rate; and	24
(b) must be related in an appropriate way to the period over which the loss was incurred.	25 26
‘(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.	27 28 29 30

Motor Accident Insurance Amendment

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).

‘Costs in cases involving relatively small awards of damages

‘55F.(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

Motor Accident Insurance Amendment

- to be awarded to the claimant on a standard basis up to a maximum of \$2 500; 1
2
- (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— 3
4
5
- (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; 6
7
- (ii) costs on or after the date on which the proceedings started are to be awarded on an indemnity basis; 8
9
- (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— 10
11
12
- (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; 13
14
15
- (ii) costs on or after the date on which the proceedings started are to be awarded to the insurer on a standard basis. 16
17
- ‘(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. 18
19
20
- ‘(5) The court must not award costs to a party related to the introduction of evidence by the party that is unnecessarily repetitive. 21
22
- Example—* 23
- 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. 24
25
26
27
- ‘(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— 28
29
30
31
- (a) the conclusion of the compulsory conference; or 32
- (b) if the parties or the court dispenses with a compulsory conference—the date when the parties completed the exchange of 33
34

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mandatory final offers. 1

‘(7) If an award of damages is affected by factors that were not 2
reasonably foreseeable by a party at the time of making the party’s 3
mandatory final offer, the court may, if satisfied that it is just to do so, make 4
an order for costs under subsection (2) or (3) as if the reference to a 5
mandatory final offer in the relevant subsection were a reference to a later 6
offer made in the light of the factors that became apparent after the parties 7
completed the exchange of mandatory final offers. 8

Example— 9

Suppose that a claimant’s medical condition suddenly and unexpectedly 10
deteriorates after the date of the final offers and the court makes a much higher 11
award of damages than would have been reasonably expected at that time. In that 12
case, the court may ignore the mandatory final offers and award costs on the basis 13
of later offers of settlement.’. 14

Amendment of s 57 (Alteration of period of limitation) 15

Clause 33. Section 57(2)— 16

omit, insert— 17

‘(2) However, the proceeding may only be brought after the end of the 18
period of limitation if it is brought within— 19

(a) 6 months after the notice is given or leave to bring the proceeding 20
is granted; or 21

(b) a longer period allowed by the court.’. 22

Insertion of new pt 4, div 6A 23

Clause 34. After section 57— 24

insert— 25

‘Division 6A—Extraterritorial operation of limitation of liability 26

‘Application of limitation of liability to foreign awards 27

‘57A.(1) This section applies to motor vehicle accident claims arising out 28
of motor vehicle accidents in Queensland. 29

Motor Accident Insurance Amendment

- ‘(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.’.

Amendment of s 58 (Insurer’s rights of recourse)

- Clause **35.** Section 58(3)—
- omit, insert—*
- ‘(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.’.

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	Insertion of new s 60A	1
Clause	36. After section 60—	2
	<i>insert—</i>	3
	‘Access to information etc.	4
	‘60A. The Nominal Defendant is entitled to have access to information	5
	and materials in the possession of any department, agency or	6
	instrumentality of the State or any local government that may be relevant to	7
	the recovery of amounts the Nominal Defendant is entitled to recover under	8
	this part.’.	9
	Amendment of s 62 (Application for licence)	10
Clause	37. Section 62(7)—	11
	<i>omit.</i>	12
	Amendment of s 64 (Conditions of licence)	13
Clause	38. Section 64(3)—	14
	<i>omit.</i>	15
	Amendment of s 67 (Effect of withdrawal or suspension on existing liabilities etc.)	16
Clause	39. Section 67(5)—	18
	<i>omit, insert—</i>	19
	‘(5) This section is subject to the following qualifications where a licence	20
	is withdrawn on the transfer, or because of the transfer, of CTP insurance	21
	business under part 3, division 5 ³ —	22
	(a) if the transferor’s entire CTP business is transferred—this section	23
	does not apply to the withdrawal of the licence;	24

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

Motor Accident Insurance Amendment

- (b) if part of the transferor's CTP business is transferred—this section applies to the withdrawal subject to section 30(4).⁴.

Insertion of new pt 5A

Clause **40.** After section 87—
insert—

‘PART 5A—ENFORCEMENT*‘Division 1—Authorised persons***‘Appointment of authorised person**

‘87A.(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.

‘Functions and powers of authorised person

‘87B.(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

⁴ Section 30 (Transfer of CTP business)

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Act or another Act.	1
‘(3) An authorised person is subject to the commission’s directions in exercising the authorised person’s powers.	2 3
‘(4) The powers of an authorised person may be limited—	4
(a) under a regulation; or	5
(b) under a condition of appointment; or	6
(c) by written notice given by the commission to the authorised person.	7 8
‘Authorised person’s employment conditions	9
‘87C.(1) An authorised person holds office on the conditions stated in the instrument of appointment.	10 11
‘(2) An authorised person—	12
(a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and	13 14
(b) may resign by signed notice given to the commission; and	15
(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 ”).	16 17 18
‘(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.	19 20 21 22
‘Authorised person’s identity card	23
‘87D.(1) The commission must give an identity card to each authorised person.	24 25
‘(2) The identity card must—	26
(a) contain a recent photograph of the authorised person; and	27
(b) be signed by the authorised person; and	28
(c) identify the person as an authorised person for the commission;	29

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and	1
(d) include an expiry date; and	2
(e) be signed by the commissioner.	3
‘(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.	4 5 6 7
Maximum penalty—10 penalty units.	8
‘Display of authorised person’s identity card	9
‘87E.(1) An authorised person may exercise a power in relation to someone else only if the authorised person—	10 11
(a) first produces his or her identity card for the person’s inspection; or	12 13
(b) has the identity card displayed so it is clearly visible to the person.	14
‘(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.	15 16 17
‘Protection from liability	18
‘87F.(1) An authorised person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.	19 20
‘(2) If subsection (1) prevents a civil liability attaching to an authorised person, the liability attaches instead to the commission.	21 22
<i>‘Division 2—Powers of authorised persons</i>	23
‘Power to require information	24
‘87G.(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—	25 26 27

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- (a) a liability under the statutory insurance scheme; 1
- (b) an entitlement under the statutory insurance scheme; 2
- (c) an offence the authorised person reasonably believes has been 3
committed against this Act. 4

‘(2) The authorised person may require the person to give the 5
information to, or produce the documents for inspection by, the authorised 6
person at a reasonable time and place nominated by the authorised person 7
and allow the authorised person to make a copy of the documents. 8

‘(3) To avoid doubt, it is declared that under subsection (2), an authorised 9
person may require the information to be given, or the documents to be 10
produced immediately, at the place the requirement is made, if the 11
requirement is reasonable in the circumstances. 12

‘(4) When making the requirement, the authorised person must warn the 13
person it is an offence to fail to give the information, or produce the 14
documents, unless the person has a reasonable excuse. 15

‘(5) The person must comply with the requirement, unless the person has 16
a reasonable excuse for not complying with it. 17

Maximum penalty—50 penalty units. 18

‘(6) A person has a reasonable excuse for failing to give the information 19
or produce the documents if— 20

- (a) the person would be entitled to refuse to give the information or 21
produce the document in a court proceeding on the ground that 22
giving the information or producing the documents would tend to 23
incriminate the person; or 24
- (b) in the case of a requirement to produce documents—the cost of 25
producing the documents would, having regard to their 26
evidentiary value and any other relevant circumstances, be 27
unreasonable. 28

‘(7) The person does not commit an offence against this section if the 29
information or documents sought by the authorised person are not in fact 30
relevant to a matter mentioned in subsection (1). 31

‘Application for warrant

‘87H.(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.

‘Issue of warrant

‘87I.(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.

‘Special warrants

‘87J.(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

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-
- (b) if the authorised person completed a warrant form—the completed warrant form. 1
2
- ‘(8) On receiving the documents, the magistrate must attach them to the special warrant. 3
4
- ‘(9) A court must find the exercise of the power by an authorised person was not authorised by a special warrant if— 5
6
- (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 7
8
9
- (b) the special warrant is not produced in evidence; and 10
- (c) it is not proved by the person relying on the lawfulness of the entry that the authorised person obtained the special warrant. 11
12
- ‘Warrants—procedure before entry 13**
- ‘87K.(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. 14
15
16
- ‘(2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things— 17
18
- (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; 19
20
21
22
- (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; 23
24
25
- (c) tell the person the authorised person is permitted by the warrant to enter the place; 26
27
- (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force. 28
29
- ‘(3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that immediate 30
31

entry to the place is required to ensure the effective execution of the warrant is not frustrated.	1 2
‘Power to seize evidence	3
‘87L.(1) An authorised person who enters a place with a warrant may search for and seize the evidence for which the warrant was issued.	4 5
‘(2) An authorised person may also seize another thing if the authorised person believes on reasonable grounds—	6 7
(a) the thing is evidence of an offence against this Act; and	8
(b) the seizure is necessary to prevent the thing being concealed, lost or destroyed.	9 10
‘Receipt for seized things	11
‘87M.(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.	12 13 14
‘(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.	15 16 17
‘Access to seized things	18
‘87N. Until a seized thing is returned or otherwise finally dealt with, an authorised person must allow its owner—	19 20
(a) to inspect it; or	21
(b) if it is a document—to make copies of it.	22
‘Return of seized thing	23
‘87O.(1) The authorised person must return a seized thing to its owner at the end of—	24 25
(a) 6 months; or	26
(b) if a prosecution for an offence involving it is started within	27

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6 months—the prosecution and any appeal from the prosecution.	1
‘(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.	2 3 4
<i>‘Division 3—Other enforcement matters</i>	5
‘Compensation	6
‘87P.(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.	7 8 9 10
‘(2) The amount may be claimed from the commission.	11
‘(3) Payment of the amount may be claimed and ordered—	12
(a) in civil proceeding for a debt; or	13
(b) in a proceeding for an offence against this Act brought against the person making the claim for the amount.	14 15
‘(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.	16 17 18
‘(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.	19 20
‘Costs of investigation	21
‘87Q.(1) This section applies if a person is convicted by a court of an offence against this Act.	22 23
‘(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.	24 25 26
‘(3) This section does not limit the orders for costs the court may make on the conviction.	27 28

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‘Division 4—Obstructing or impersonating authorised persons

‘Obstruction of authorised persons

‘87R.(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.

‘Impersonation of authorised persons

‘87S. A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

‘Division 5—Fraud and false and misleading statements

‘Offences involving fraud

‘87T.(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.

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‘False or misleading information or documents

‘87U.(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

‘Information from Commissioner of Police Service

‘87V.(1) The Commissioner of the Police Service may, on the Insurance Commissioner’s written request, give to the commission information in the

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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. 1
2
3

‘(2) The information that may be given is— 4

(a) the person’s criminal history or part of the person’s criminal history; and 5
6

(b) any brief of evidence compiled by the Queensland Police Service on anything mentioned in the person’s criminal history; and 7
8

(c) any document about any complaint made by or against the person. 9
10

‘(3) For this section, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply. 11
12

‘(4) Information given to the commission by the Commissioner of the Police Service under this section— 13
14

(a) must not be used for any purpose other than an investigation or prosecution under this Act; and 15
16

(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. 17
18
19

Division 7—Proceedings 20

‘Proceedings 21

‘87W.(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 the commissioner or a person authorised by the commissioner to take the proceeding. 22
23
24
25

‘(2) The proceeding must start— 26

(a) within 2 years after the commission of the offence; or 27

(b) within 6 months after the commission of the offence comes to the knowledge of the complainant; 28
29

whichever is the later. 30

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- ‘(3) A statement in a complaint that— 1
- (a) the complainant is authorised by the commissioner to take the 2
proceedings; or 3
 - (b) the commission of the alleged offence came to the knowledge of 4
the complainant on a particular date; 5
- is evidence of the fact stated. 6

‘Division 8—Evidence 7

**‘Evidentiary certificates given by the commission and transport 8
administration 9**

‘87X.(1) The commission may issue a certificate certifying any 1 or 10
more of the following matters— 11

- (a) that the commission made a specified decision under this Act on a 12
specified date; 13
- (b) that the commission carried out a specified administrative act 14
under this Act on a specified date; 15
- (c) that the commission gave a specified notice to a specified person 16
in a specified way on a specified date; 17
- (d) that an address at which a specified notice was left, or to which it 18
was sent, was the last address known to the commission of the 19
person to whom the notice was to be given. 20

‘(2) Transport administration may issue a certificate certifying any 1 or 21
more of the following matters— 22

- (a) that a specified vehicle was or was not registered at a specified 23
time, or over a specified period; 24
- (b) that a specified vehicle was or was not insured under the statutory 25
insurance scheme at a specified time, or over a specified period; 26
- (c) that a specified amount is, or was at a specified time, payable to 27
transport administration as an insurance premium for CTP 28
insurance for a specified vehicle; 29
- (d) that there was a specified deficiency in the amount received by 30

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transport administration on a specified date by way of an insurance premium for CTP insurance for a specified vehicle.

‘(2) A certificate under this section is admissible in civil or criminal proceedings as evidence of anything stated in the certificate.

‘(3) 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.’.

Amendment of s 88 (Information to be provided by licensed insurers)

Clause **41.** Section 88(3)—

omit, insert—

‘(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.’.

Insertion of new s 88A

Clause **42.** After section 88—

insert—

‘Commission’s power to intervene to establish information processing systems

‘**88A.(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

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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.’.

Omission of s 93 (False statements etc.)

Clause 43. Section 93—
omit.

Omission of s 96 (Restriction on commission)

Clause 44. Section 96—
omit.

	Replacement of s 97 (CTP insurance premiums not to be discounted etc.)	1
		2
Clause	45. Section 97—	3
	<i>omit, insert—</i>	4
	‘CTP premiums not to be discounted etc.	5
	‘97.(1) A licensed insurer or a broker or other person acting for a licensed insurer must not—	6
		7
	(a) discount, reduce, waive, or defer payment of the premium on a CTP insurance policy; or	8
		9
	(b) offer to discount, reduce, waive, or defer payment of the premium on a CTP insurance policy; or	10
		11
	(c) give or offer to give a rebate on the premium on a CTP insurance policy.	12
		13
	Maximum penalty—300 penalty units.	14
	‘(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.	15
		16
		17
		18
		19
	Maximum penalty—300 penalty units.	20
	‘(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.	21
		22
		23
	Maximum penalty—300 penalty units.	24
	‘(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.	25
		26
		27
	‘(5) A court that convicts a licensed insurer of an offence against this section may, by order, withdraw the licence.’.	28
		29

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	Omission of s 98 (Certain prosecutions require authorisation)	1
Clause	46. Section 98—	2
	<i>omit.</i>	3
	Replacement of s 101 (Review of Act)	4
Clause	47. Section 101—	5
	<i>omit, insert—</i>	6
	‘Periodical reviews	7
	‘101.(1) Whenever it appears necessary to review this Act to ensure that	8
	it is adequately meeting community expectations and its provisions remain	9
	appropriate, the Minister must have such a review carried out.	10
	‘(2) The Minister must cause a report of the outcome of a review under	11
	subsection (1) to be laid before the Legislative Assembly.’.	12
	Insertion of new pt 7, div 3	13
Clause	48. After section 107—	14
	<i>insert—</i>	15
	‘Division 3—Provisions for Motor Accident Insurance Amendment	16
	Act 2000	17
	‘Application of amendments made by the Motor Accident Insurance	18
	Amendment Act 2000 to motor vehicle accident claims	19
	‘108.(1) In this section—	20
	“relevant amendment” means an amendment to this Act made by the	21
	<i>Motor Accident Insurance Amendment Act 2000.</i>	22
	‘(2) This Act, as amended by a relevant amendment—	23
	(a) applies to a motor vehicle accident claim arising from a motor	24
	vehicle accident that happens on or after the commencement of	25
	the relevant amendment; and	26
	(b) governs the terms and conditions of a CTP insurance policy under	27

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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.

‘Special provision about financial years

‘109. 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.

‘Ratification of action taken in anticipation of amendments made by the Motor Accident Insurance Amendment Act 2000

‘110.(1) This section applies to anything done with a view to—

- (a) fixing levies for the financial year commencing on 1 October 2000; or
- (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.’.

Amendment of schedule (Policy of insurance)

Clause **49.** Schedule, section 3(2)—

omit, insert—

‘(2) This policy does not insure an employer against a liability to pay

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- damages for injury to an employee if— 1
- (a) the injury arises from the employer’s failure to provide a safe 2
system of work for the employee or the employer’s breach of 3
some other duty of care to the employee; and 4
 - (b) neither the employer nor another employee of the employer was 5
the driver of the motor vehicle at the time of the motor vehicle 6
accident out of which the injury arose. 7
- ‘(3) This policy does not insure against a liability to pay exemplary, 8
punitive or aggravated damages. 9
- ‘(4) This policy does not insure against a liability to pay damages for an 10
injury that arises gradually from a series of incidents.’. 11
12