



# **Motor Accident Insurance Act 1994**

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Queensland

# Motor Accident Insurance Act 1994

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# Motor Accident Insurance Act 1994

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

## Part 1 Preliminary

### 1 Short title

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

### 2 Commencement

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

### 3 Objects

The objects of this Act are—

- (a) to continue and improve the system of compulsory third-party motor vehicle insurance (*CTP insurance*), and the scheme of statutory insurance for uninsured and unidentified vehicles, operating in Queensland; and
- (b) to establish a basis for assessing the affordability of CTP insurance; and
- (c) to keep the costs of CTP insurance at a level the average motorist can afford; and
- (d) to promote competition in the setting of premiums for CTP insurance; and

- (e) to provide for the licensing and supervision of insurers providing CTP insurance under CTP insurance policies; and
- (f) to encourage licensed insurers to act in a way that supports the integrity of, and public confidence in, the statutory insurance scheme; and
- (g) to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents; and
- (h) to promote and encourage, as far as practicable, the rehabilitation of claimants who sustain personal injury because of motor vehicle accidents; and
- (i) to establish and keep a register of claims to help the administration of the statutory insurance scheme and the detection of fraud; and
- (j) to promote measures directed at eliminating or reducing causes of motor vehicle accidents and mitigating their results; and
- (k) to establish measures directed at eliminating or reducing the practice of giving or receiving consideration for a claim referral or potential claim referral, or soliciting or inducing a claimant to make a claim, in contravention of this Act.

## 4 Definitions

In this Act—

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

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

***affected person***, in relation to a decision, for part 5A, see section 81.

***affordability index*** means 45% of Queensland full-time adult persons ordinary time earnings declared by the Australian

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Statistician in the original series of the statistician's average weekly earnings publication most recently published.

**agricultural machine** means an agricultural machine for which registration is required under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010*.

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

**associate**, of a law practice, see the *Legal Profession Act 2007*, section 7(1).

**associated person**, for an investigated person, for part 5B, see section 87ZA.

**authorised person**, for part 5A, see section 81.

**average weekly earnings**, for a financial year, means the amount of Queensland full-time adult persons ordinary time earnings declared by the Australian Statistician in the original series of the statistician's average weekly earnings publication most recently published before the start of the financial year.

**barrister** see the *Legal Profession Act 2007*, schedule 2.

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

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

*Examples of claimants—*

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

**class—**

[s 4]

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

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

**commissioner** means the insurance commissioner.

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

**costs**—

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

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

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

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



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

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

***CTP insurance*** see section 3(a).

***CTP insurance policy*** means—

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

***declared costs limit*** means the amount prescribed under a regulation as the declared costs limit.

*Note—*

Under section 100A, the Minister must make a recommendation about the amount to be prescribed.

***decision notice***, for part 5A, see section 87SD(1).

***electronic document***, means a document of a type mentioned in the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

***eligible person*** means a person who, under the National Injury Act, section 12, is eligible to participate in the injury insurance scheme.

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

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

***GST law*** means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth); and

- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods and services.

**GVM** means gross vehicle mass.

**identity card**, for part 5A, see section 81.

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

- (a) the conduct of the business; or  
(b) the statutory insurance scheme.

*Editor's note—*

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

**information notice**, for an original decision, for part 5A, see section 81.

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

**injury insurance scheme** means the national injury insurance scheme, Queensland established under the National Injury Act, chapter 2.

**injury insurance scheme levy** means the levy under the National Injury Act.

**insurance agency** means the National Injury Insurance Agency, Queensland established under the National Injury Act.

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

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

**insured person** means—

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

***insurer's premium*** means an insurer's consideration for providing insurance under a CTP insurance policy.

***internal review***, of an original decision, for part 5A, see section 87SA(1).

***internal review decision***, for part 5A, see section 81.

***investigated person***, for part 5B, see section 87ZA.

***investigator***, for part 5B, see section 87ZA.

***law practice*** see the *Legal Profession Act 2007*, schedule 2.

***law practice certificate*** see section 36B(1).

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

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

***lower offer limit*** means the amount prescribed under a regulation as the lower offer limit.

*Note—*

Under section 100A, the Minister must make a recommendation about the amount to be prescribed.

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

***mobile machinery*** has the meaning given by the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010*.

***motor vehicle*** means a vehicle for which registration is required under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* and includes a trailer.

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

**National Injury Act** means the *National Injury Insurance Scheme (Queensland) Act 2016*.

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

**notice**, for part 5A, see section 81.

**occupier**, of a place, for part 5A, see section 81.

**of**, a place, for part 5A, see section 81.

**offence warning**, for a requirement by an authorised person, for part 5A, see section 81.

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

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

**original decision**, for part 5A, see section 81.

**owner**, of a thing that has been seized under part 5A, see section 81.

**participant**, in the injury insurance scheme, see the National Injury Act, section 14(1).

**personal injury** includes—

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

**person in control**, of a thing, for part 5A, see section 81.

**place**, for part 5A, see section 81.

**premises**, for part 5A, see section 81.

**principal**, of a law practice, see the *Legal Profession Act 2007*, section 7(4).

**public place**—

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- (a) generally, has the meaning given by the *Transport Operations (Road Use Management) Act 1995*; and
  - (b) for part 5A, see section 81.

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***reasonably suspects*** means suspects on grounds that are reasonable in the circumstances.

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

***registration***, of a motor vehicle, includes a permit, plate or other authorisation under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* permitting a motor vehicle to be used on a road without registration but does not include an authorisation under section 107 of that regulation.

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

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

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

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

***self-insurer*** means—

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

***serious personal injury*** see the National Injury Act, schedule 1.

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

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

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

***supervising principal***, of a law practice in relation to a claim, means the principal of the law practice who has the primary responsibility for the conduct of the claim.

***transport administration*** means—

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

***treatment, care and support needs***, of a person, see the National Injury Act, section 8.

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

***upper offer limit*** means the amount prescribed under a regulation as the upper offer limit.

*Note*—

Under section 100A, the Minister must make a recommendation about the amount to be prescribed.

***vehicle***, for part 5A, see section 81.

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

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

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

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

- (1) An *act of terrorism* is an act done or threat made by a person—
  - (a) for an ethnic, ideological, political, religious or similar purpose; and
  - (b) with the intention to—
    - (i) cause personal injury or damage to property; and
    - (ii) influence a government or put the public, or a section of the public, in fear.
- (2) It does not matter whether the person is acting alone or with others or in connection with an organisation or government.
- (3) To decide whether the act was done or the threat was made for a purpose or with an intention mentioned in subsection (1), regard may be had to the nature of the act or threat and the context in which the act was done or the threat was made.

#### **5 Application of this Act**

- (1) This Act applies to personal injury caused by, through or in connection with a motor vehicle if, and only if, the injury—
  - (a) is a result of—
    - (i) the driving of the motor vehicle; or

- (ii) a collision, or action taken to avoid a collision, with the motor vehicle; or
  - (iii) the motor vehicle running out of control; or
  - (iv) a defect in the motor vehicle causing loss of control of the vehicle while it is being driven; and
- (b) is caused, wholly or partly, by a wrongful act or omission in respect of the motor vehicle by a person other than the injured person.
- (2) For an uninsured motor vehicle, subsection (1) applies only if the motor vehicle accident out of which the personal injury arises happens on a road or in a public place.
- (3) However, this Act does not apply to personal injury caused by, through or in connection with—
  - (a) a tractor, backhoe, bulldozer, end-loader, forklift, industrial crane or hoist, or other mobile machinery, other than an agricultural machine; or
  - (b) an agricultural machine; or
  - (c) a motor vehicle adapted to run on rail or tram tracks; or
  - (d) an amphibious vehicle; or
  - (e) a motor vehicle of a class prescribed by regulation;unless the motor vehicle accident out of which the injury arises happens on a road.
- (4) For subsection (1)(b), the reference to a wrongful act or omission in respect of the motor vehicle does not include the use of the motor vehicle at the particular time it is being used for the actual doing of an act or making of a threat that is an act of terrorism.
- (5) The following is an example of a particular time when a motor vehicle is not being used for the actual doing of an act that is an act of terrorism—

A is the driver of a motor vehicle from which a bomb is thrown at a government building. It is established that at the time the bomb is thrown the motor vehicle is being used for an act of terrorism. In driving away from the building after the bomb is thrown, A runs into a



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motor vehicle being driven by B. At the time A's motor vehicle runs into B's motor vehicle A's motor vehicle is not being used for the actual doing of an act of terrorism.

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

## **Part 2                      Motor Accident Insurance    Commission**

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

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

The Motor Accident Insurance Commission is established.

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

- (1) The insurance commissioner, in the commissioner's official capacity (but not in the capacity of Nominal Defendant), constitutes the commission.
- (2) The insurance commissioner is to be employed under the *Public Service Act 2008*.

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

- (1) The commission—
- (a) is a body corporate; and
  - (b) has a seal; and
  - (c) may sue and be sued under the name Motor Accident Insurance Commission.
- (2) The commission has all the powers of an individual and may, for example—
- (a) enter into contracts; and

- (b) acquire, hold, dispose of, and deal with, property; and
  - (c) employ staff (including temporary staff); and
  - (d) appoint agents and attorneys; and
  - (e) engage consultants; and
  - (f) fix charges, and other terms, for the provision of services by the commission.
- (3) The commission's seal is to be kept as directed by the commissioner and may be used only as directed or authorised by the commissioner.
- (4) Judicial notice must be taken of the imprint of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

## **9 Power of delegation**

The commission may delegate its powers under this Act.

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

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

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

### **10 Commission's functions**

- (1) The commission's functions are to—
  - (a) supervise insurers operating under the statutory insurance scheme and issue, suspend or withdraw licences for insurers operating under the scheme; and

- (b) regulate the statutory insurance scheme; and
- (c) establish and revise prudential standards with which licensed insurers must comply; and
- (d) establish and revise standards about the proper management of claims with which licensed insurers must comply; and
- (e) monitor the management of claims by insurers under the statutory insurance scheme and, in particular, the insurers' compliance with their obligations under part 4; and
- (f) appoint, under the industry deed, a person to arbitrate disputes between 2 or more insurers about a claim; and
- (g) fix for each class of CTP insurance the range within which an insurer's premium must fall; and
- (h) recommend the levies and the administration fee payable under this Act; and
- (i) monitor the availability, adequacy and use of rehabilitation services for claimants who suffer personal injury in motor vehicle accidents and develop programs, resources and guidelines to overcome deficiencies in the services; and
- (j) 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
- (k) provide funds for research and education in the field of rehabilitation and the provision of rehabilitation services; and
- (l) provide funds for research into the causes of motor vehicle accidents and their prevention; and
- (m) establish and maintain a call centre from which the public may obtain information on the statutory insurance scheme; and
- (n) carry out, or contribute to, advertising campaigns to increase public awareness of the causes of motor vehicle

- accidents, and of the economic, social and personal cost of motor vehicle accidents; and
- (o) promote and, if funds are available, make financial contributions towards—
    - (i) the regular inspection of motor vehicles to ensure safety and roadworthiness; and
    - (ii) the training of drivers (including the provision of defensive driving courses); and
    - (iii) training in first aid; and
    - (iv) the provision, maintenance and support of the infrastructure necessary to reduce the incidence of motor vehicle accidents and minimise the results; and
  - (p) 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
  - (q) develop and coordinate strategies to identify and combat fraud in or related to claims; and
  - (r) keep the industry deed under review and make recommendations for its amendment; and
  - (s) keep the statutory insurance scheme generally under review and make recommendations for its amendment; and
  - (t) conduct research and collect statistics about the statutory insurance scheme; and
  - (u) perform another function given to the commission under this or another Act.

*Note—*

For the functions of the commission in relation to the injury insurance scheme, see the National Injury Act, chapter 5.

- (2) In determining prudential standards for licensed insurers, the commission must have proper regard to the prudential

standards that apply to the insurance industry under Commonwealth legislation.

- (3) The commission must publish on its website standards made under subsection (1)(c) or (d).
- (4) A standard made under subsection (1)(d) applies to the management of a claim from the day the standard is published, whether the claim was made before or after that day.

## **11 Advisory committees**

- (1) The commission may establish 1 or more advisory committees to advise on the exercise of the commission's statutory functions.
- (2) The matters on which an advisory committee may provide advice are to be decided by the commission with the approval of the Minister.
- (3) An advisory committee is to consist of persons appointed by the Minister on the commission's nomination.
- (4) The terms on which the members of an advisory committee hold office are to be decided by the Minister.

## **Division 3 Insurance premiums**

### **12 Insurance premiums**

- (1) An insurance premium under the statutory insurance scheme consists of the following components—
  - (a) the insurer's premium;
  - (b) the statutory insurance scheme levy;
  - (c) the hospital and emergency services levy;
  - (d) the Nominal Defendant levy;
  - (e) the injury insurance scheme levy;

- (f) the administration fee.
- (2) The insurer's premium is the insurer's consideration for providing the insurance.
- (3) The statutory insurance scheme levy is to cover the estimated costs of—
  - (a) the administration of this Act (other than costs associated with the Nominal Defendant scheme) for the financial year in which the levy is fixed, together with any shortfall from previous financial years; and
  - (b) the commission performing its functions under the National Injury Act, chapter 5 for the financial year in which the levy is fixed.
- (4) The hospital and emergency services levy is to cover a reasonable proportion of the estimated cost of providing public hospital services and emergency services for the financial year for which the levy is fixed having regard to the number of people who—
  - (a) are injured in motor vehicle accidents; and
  - (b) make use of public hospital services and emergency services as a result of their injuries; and
  - (c) are claimants or potential claimants under the statutory insurance scheme, but are not—
    - (i) participants in the injury insurance scheme; or
    - (ii) eligible persons.
- (5) The Nominal Defendant levy is to cover the estimated costs of the Nominal Defendant scheme for the financial year or other period for which the levy is fixed together with any shortfall from previous financial years.
- (6) The administration fee is the fee payable to transport administration for work done in the administration of the statutory insurance scheme.
- (7) The administration fee is a controlled receipt for the purposes of the *Financial Accountability Act 2009*.

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### 13 The insurer's premium

- (1) An insurer's premium is to be set by each licensed insurer, within limits fixed by the commission, for each class of insurance.
- (2) The premiums are to relate to a period (an *assessment period*) fixed under a regulation.
- (3) The insurer's premium is to be set by the insurer on the basis that the insurance is to cover a registration period of 1 year.
- (3A) Subsection (3B) applies to a CTP insurance policy—
  - (a) that comes into force after 30 June 2003; and
  - (b) for which a person is entitled to an input tax credit for the insurer's premium component of the insurance premium for the policy.
- (3B) The insurer's premium consists of—
  - (a) the amount set under subsection (1) for the class of insurance to which the policy relates; and
  - (b) an additional amount prescribed under a regulation.
- (4) If the registration period is more or less than 1 year, the insurer's premium for the relevant CTP policy is—
  - (a) the proportion of the insurer's premium for 1 year that the period of registration bears to 1 year; and
  - (b) an additional amount fixed on a basis prescribed under a regulation.
- (5) A regulation under subsection (3B)(b) may prescribe a different amount for each class of insurance provided by each licensed insurer.
- (6) In this section—

*input tax credit* has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), section 195-1.

### **13A Premium rates**

- (1) This section describes the process for setting the insurer's premiums, under section 13(1), for each assessment period.
- (2) The commission first fixes limits of insurer's premium for each class of CTP insurance.
- (3) The limits consist of a floor amount (below which the premium can not be set) and a ceiling amount (above which the premium can not be set).
- (4) Before the commission fixes the limits, the commission must invite written submissions from—
  - (a) licensed insurers on matters relevant to the fixing of the limits and, in particular, on—
    - (i) current factors and trends influencing the cost of insurance under the statutory insurance scheme; and
    - (ii) any other factors that should, in the opinion of the insurers, influence the permissible range of insurers' premiums for the assessment period; and
  - (b) major organisations representing motorists in Queensland.
- (5) The commission must at least once in each year obtain an actuarial analysis of the statutory insurance scheme and, at least once in each quarter, obtain an actuarial review of current trends that could affect the financial soundness of the scheme.
- (6) After considering the financial soundness of the statutory insurance scheme in the light of the most recent actuarial analysis and quarterly review obtained under subsection (5), the submissions made in response to the commission's invitations and other material the commission considers relevant, the commission must—
  - (a) fix the limits of insurer's premium for each class of CTP insurance; and
  - (b) give each licensed insurer a written notice—



- (i) stating the limits fixed for each class of CTP insurance; and
  - (ii) requiring the insurer to submit its insurer's premiums for each class of CTP insurance for the relevant assessment period on or before a date stated in the notice; and
  - (iii) specifying other requirements with which the insurer's submission must comply.
- (7) The premiums must be submitted in accordance with requirements specified in the notice within a time limit fixed under a regulation.
- (8) Each licensed insurer must give the commission written notice of the premiums set by the insurer on or before the date stated in the commission's notice.
- (9) On receipt of the notice from the insurer, the commission must, within a time limit fixed by a regulation—
  - (a) record the premiums set by the insurer for the relevant assessment period for each class of CTP insurance; and
  - (b) give the insurer a written notice confirming the insurer's insurance premiums for the relevant assessment period; and
  - (c) notify transport administration of each insurer's insurance premiums for the relevant assessment period.
- (10) If a licensed insurer—
  - (a) fails to submit premiums for each class of CTP insurance as required by the commission; or
  - (b) sets a premium outside the limits allowed by the commission;the commission may, by written notice to the insurer, withdraw the insurer's licence.

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

- (1) At least 4 months before the end of each financial year, the commission must make recommendations to the Minister on the amount of—
  - (a) the statutory insurance scheme levy for the next financial year; and
  - (b) the hospital and emergency services levy for the next financial year; and
  - (c) the Nominal Defendant levy for the next financial year and the component, if any, to be included in the levy for satisfying liabilities of the Nominal Defendant under section 33(2); and
  - (d) the administration fee for the next financial year.

*Note—*

For the commission's role in making recommendations about the injury insurance scheme levy, see the National Injury Act, section 98.

- (2) A levy mentioned in subsection (1) or the administration fee may vary according to any 1 or more of the following factors—
  - (a) the class of CTP insurance;
  - (b) the period of insurance;
  - (c) any other factor stated in a regulation.
- (3) If there is an unexpected increase in the Nominal Defendant's liabilities that necessitates, in the commission's opinion, an increase in the Nominal Defendant levy before the end of a financial year for which the levy has been fixed, the commission may, at any time, recommend a special increase in the Nominal Defendant levy.

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

- (1) Each of the following are to be fixed by regulation for each financial year—
  - (a) the statutory insurance scheme levy;

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- (b) the hospital and emergency services levy;
  - (c) the Nominal Defendant levy;
  - (d) the administration fee.
- (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 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 or a later date specified in the regulation.

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

- (1) The costs of CTP insurance exceed the affordability index if the insurance premium for a CTP insurance policy for a class 1 motor vehicle (assuming the insurer's premium is set at the highest amount set by a licensed insurer) exceeds the affordability index.
- (2) If the costs of CTP insurance exceed the affordability index, the commission must give the Minister a report about the effect of current trends on the affordability of CTP insurance.
- (3) Subsection (4) applies if the commission considers changes to the statutory insurance scheme or the injury insurance scheme

are necessary to counter the effect of undesirable trends on the affordability of CTP insurance.

- (4) The commission may, in its report, recommend the changes.
- (5) If the report recommends changes to the injury insurance scheme, the commission must give a copy of the report to the Treasurer.
- (6) In fixing the range within which an insurer's premium for a class 1 motor vehicle must fall, the commission is not to be influenced by the fact that the proposed range could result in the costs of CTP insurance exceeding the affordability index if the ceiling amount is, according to actuarial advice, appropriate to ensure the financial soundness of the scheme.
- (7) 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.
- (8) In this section—

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

*insurance premium*, for a CTP insurance policy for a class 1 motor vehicle, does not include the relevant insolvency liability component or an amount prescribed under section 13(3B)(b) for the insurer's premium component of the insurance premium for the policy.

*relevant insolvency liability component* means the amount included in the Nominal Defendant levy that the Minister considers is attributable to satisfying liabilities of the Nominal Defendant under section 33(2).

## Division 4                    The Nominal Defendant

### 16            The Nominal Defendant

- (1) The Nominal Defendant—
  - (a) is a body corporate; and

- (b) has a seal; and
  - (c) may sue and be sued under the name Nominal Defendant.
- (2) The commissioner is the Nominal Defendant.
  - (3) The Nominal Defendant has all the powers of an individual and may, for example—
    - (a) enter into contracts; and
    - (b) acquire, hold, dispose of, and deal with, property; and
    - (c) employ staff (including temporary staff); and
    - (d) appoint agents and attorneys; and
    - (e) engage consultants.
  - (4) The Nominal Defendant may delegate powers under this Act.
  - (5) The Nominal Defendant's seal is to be kept as directed by the commissioner and may be used only as directed or authorised by the commissioner.
  - (6) Judicial notice must be taken of the imprint of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

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

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

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

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

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

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

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

## **Division 5 Annual report**

### **19 Annual report**

- (1) The commission must report annually under the *Financial Accountability Act 2009*.
- (2) The report must—
  - (a) include a report dealing with all significant aspects of the operation of the statutory insurance scheme, with particular reference to the operation of the provisions affecting the management of claims; and
  - (b) contain information about the cost to the community of motor vehicle accidents for the relevant financial year; and
  - (c) contain information about the cost of administering this Act and the Nominal Defendant scheme for the financial year; and
  - (d) contain further information that may be required by regulation; and
  - (e) include the audited accounts of the Motor Accident Insurance Fund and the Nominal Defendant Fund.

*Note—*

See also the National Injury Act, section 104.

- (3) In this section—

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*motor vehicle accident* includes an incident resulting in serious personal injury in relation to which the National Injury Act applies.

## **Part 3                      Compulsory insurance**

### **Division 1                Obligation to insure**

#### **20            Offence of driving uninsured vehicle etc.**

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

Maximum penalty—80 penalty units.

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

Maximum penalty—80 penalty units.

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

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

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

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

- (1) This section applies if a person has been issued a permit under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010*, section 108, authorising the use of an unregistered motor vehicle on roads.

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- (2) A gratuitous CTP insurance policy in terms of the schedule under which the Nominal Defendant is the insurer is taken to be in force for the motor vehicle while the permit is in force.
- (3) However, subsection (2) does not apply for any period when a CTP insurance policy is otherwise in force for the motor vehicle while the permit is in force.

## **Division 2                      Selection of insurer**

### **21                      Selection of insurer**

- (1) On lodging an application for the registration of a motor vehicle with transport administration, the applicant must select a licensed insurer to be the insurer under the CTP insurance policy for the vehicle by exercising 1 of the following options—
  - (a) the applicant may, at the time of lodging the application, nominate, in a way approved by transport administration, a particular licensed insurer to be the insurer under the CTP insurance policy for the vehicle and pay the appropriate insurance premium to transport administration;
  - (b) the applicant may lodge with the application a certificate in a form approved by the commission certifying that the appropriate insurance premium has been paid to the licensed insurer on whose behalf the certificate is issued.
- (2) The registered operator of a registered motor vehicle may, on lodging an application for renewal of registration or at any other time, change the insurer for the vehicle as from the end of the current registration period by nominating, in a way approved by transport administration, another licensed insurer as the insurer of the motor vehicle.
- (3) However—
  - (a) if a registered operator lodges an application for renewal of registration before the end of a current period of



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- registration, a nomination to change the insurer for the period for which the renewal is to take effect can not be made after the time of lodging the application for renewal; and
- (b) a nomination under subsection (2) becomes void if, between the time it is lodged and the time it is to take effect—
    - (i) the registration of the motor vehicle is transferred; or
    - (ii) a further notice of nomination is lodged with transport administration under subsection (2).
- (4) On lodging an application for renewal of the registration of a motor vehicle with transport administration, the applicant must—
- (a) pay the appropriate insurance premium to transport administration; or
  - (b) lodge with transport administration a certificate in a form approved by the commission certifying that the appropriate insurance premium (for the period for which the registration is to be renewed) has been paid to the licensed insurer on whose behalf the certificate is issued.
- (5) If an applicant for registration or renewal of registration of a motor vehicle pays to transport administration an amount that is (after subtracting any amount payable to transport administration by way of registration fees and charges) less than the appropriate insurance premium but within the tolerances set by the commission—
- (a) the applicant is taken to have paid the appropriate insurance premium; and
  - (b) the amount is to be applied as follows—
    - (i) first to paying the registration fees and charges, the administration fee and the levies;
    - (ii) secondly to paying the remaining balance to the insurer.

- (6) However, in a case to which subsection (5) applies, the CTP insurer may recover, as a debt, from the registered operator of the motor vehicle the difference between the insurer's premium the insurer would have received if the insurance premium had been paid in full and the amount actually received by the insurer.
- (7) The commission may—
- (a) fix tolerances for subsection (5); or
  - (b) change or replace tolerances previously fixed for subsection (5).
- (8) When the commission fixes the tolerances (or changes or replaces tolerances previously fixed), the commission must give written notice of the tolerances (or the new tolerances) to transport administration and all licensed insurers.
- (9) For this section—
- (a) a person is taken to have made a nomination in a way approved by transport administration if the nomination is communicated to transport administration in a way transport administration considers acceptable; and
  - (b) a person is taken to have lodged a certificate with transport administration if the certificate or its contents are transmitted to, and received by, transport administration in a way transport administration considers acceptable.
- (10) In this section—
- appropriate insurance premium*** means the gross insurance premium calculated by reference to—
- (a) the period for which registration is to be granted or renewed; and
  - (b) the class of motor vehicle; and
  - (c) the insurer's premium for the insurer last selected under this section for the relevant class of insurance.

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

- (1) A CTP insurance policy under this Act is binding on the licensed insurer by force of this Act, and a licensed insurer can not repudiate, or decline to issue or renew, a CTP insurance policy.
- (2) If an application is made to a licensed insurer for an insurance certificate for use in connection with an application to register or renew the registration of a motor vehicle, and the appropriate insurance premium is tendered to the insurer by the applicant, the insurer must issue the certificate.

Maximum penalty—300 penalty units.

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

## **23 Statutory policy of insurance**

- (1) When transport administration registers or renews the registration of a motor vehicle—
  - (a) a policy of insurance in terms of the schedule comes into force for the motor vehicle when the registration or renewal of registration takes effect; and
  - (b) the licensed insurer selected under this part in or in relation to the relevant application is the insurer under the policy.
- (2) The policy remains in force for the period of registration and for a further period of grace ending on the first of the following to happen—
  - (a) on the renewal of the registration or the grant of a permit allowing the vehicle to be driven on roads while unregistered;
  - (b) on the expiry of 30 days from the end of the period of registration.
- (3) However—
  - (a) if the registration is cancelled before the end of the period for which it was granted or renewed, the policy

- ceases to be in force when the cancellation takes effect (and there is no period of grace); and
- (b) if a cancellation of registration takes effect during the period of grace, the period of grace ends when the cancellation takes effect; and
  - (c) the period of grace does not include a period for which the vehicle has plates attached to it that allow it to be driven while unregistered; and
  - (d) if the registered operator of the motor vehicle has selected a licensed insurer to become the insurer of the motor vehicle as from the end of the period of registration, the selected insurer becomes the insurer under the policy for the period of grace.
- (3A) If the registration of a motor vehicle is renewed after the end of the period of grace, the vehicle is uninsured from the end of the period of grace until the registration is renewed (even though the period for which the registration is renewed is backdated to the end of the previous registration period).
- (4) The validity of the policy is unaffected by—
- (a) transport administration's failure to collect the insurance premium in full; or
  - (b) another error of transport administration or an error of an insurer.
- (5) If a CTP insurance policy comes into force under this Act and the insurance premium has not been collected, in full, by or for the insurer, the insurer may recover the premium, or as much of it as has not been paid, as a debt, from the person in whose name the motor vehicle is registered.
- (6) If—
- (a) a cheque received by transport administration for the premium, or for an amount including the premium, on a CTP insurance policy is not paid on first presentation; or
  - (b) transport administration becomes aware that, because of administrative error, the amount accepted by it as the

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premium on a CTP insurance policy is not the full amount of the premium; or

- (c) a payment received electronically by transport administration for the premium, or for an amount including the premium, on a CTP insurance policy is subsequently withdrawn;

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

- (7) If provision is made by regulation for the gratuitous insurance of vehicles of a particular class under policies of CTP insurance, a vehicle of the relevant class must be regarded, subject to any conditions and limitations prescribed by regulation, as insured by a CTP insurance policy under which the Nominal Defendant is the insurer.
- (8) If a licensed insurer issues a CTP insurance certificate for an uninsured motor vehicle, the motor vehicle is covered by the insurer under a CTP insurance policy while the vehicle is being driven as far as is reasonably necessary—
- (a) to obtain an inspection certificate, or a weighbridge certificate, necessary for the vehicle's registration; or
- (b) to take the vehicle to the nearest convenient place for an inspection that is necessary for registration.
- (9) However, CTP insurance cover under subsection (8) does not extend to an unregistered vehicle while it is being driven to a place to arrange or undergo repair or another purpose not specifically authorised by the subsection.
- (10) In this section—
- inspection certificate*** means an inspection certificate under the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010*.

## **24 Transfer of registration**

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

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

- (1) An applicant for registration, or renewal of registration, of a motor vehicle must not make a misstatement or misrepresentation that results in—
  - (a) the motor vehicle being incorrectly classified; and
  - (b) a consequent reduction in the amount of the premium charged for the CTP insurance policy for the vehicle.

Maximum penalty—30 penalty units.

- (2) However, it is a defence to a charge of an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the misstatement or misrepresentation was true.
- (2A) A person must not drive a motor vehicle, or permit a motor vehicle to be driven, on a road or in a public place knowing that the vehicle has been incorrectly classified and that, as a result, less than the appropriate insurance premium has been paid for a policy of CTP insurance.

Maximum penalty—30 penalty units.

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

Maximum penalty—300 penalty units.

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

This division does not apply to—

- (a) a trailer other than a trailer that is registered, or about to be registered, under the *Interstate Road Transport Act 1985* (Cwlth); or

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- (b) a motor vehicle owned by a self-insurer.

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

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

- (1) Transport administration must in each week—
- (a) give the commission a return setting out, for the previous week—
    - (i) the total amount received by way of insurance premiums; and
    - (ii) the total amount received by way of insurer's premium for each licensed insurer; and
    - (iii) the amount received by way of statutory insurance scheme levy; and
    - (iv) the amount received by way of hospital and emergency services levy; and
    - (v) the amount received by way of Nominal Defendant levy; and
    - (vi) the amount received by way of the injury insurance scheme levy; and
    - (vii) the amount received by way of administration fee; and
  - (b) pay to each licensed insurer the total amount received by way of insurer's premium for the licensed insurer; and
  - (c) pay to the commission the total amount received by way of levies, other than amounts received by way of the injury insurance scheme levy.
- (2) Transport administration must also in each week—

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- (a) give the insurance agency a return setting out, for the previous week, the amount received by way of the injury insurance scheme levy; and
  - (b) pay to the insurance agency the total amount received by way of the injury insurance scheme levy.
- (3) For subsections (1)(c) and (2)(b), the total amount received by way of levy includes any amount received from a licensed insurer for transmission to the commission or the insurance agency.
- (4) Transport administration may retain the amount received by way of administration fee.

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

- (1) Within a week after transport administration notifies a licensed insurer that it has received a certificate certifying payment of an insurance premium to the licensed insurer, the licensed insurer must—
- (a) pay to transport administration (for transmission to the commission or the insurance agency) the component of the insurance premium consisting of the levies; and
  - (b) pay to transport administration the component of the insurance premium consisting of the administration fee.

Maximum penalty—150 penalty units.

- (2) However, an insurer's liability to make payments under subsection (1) to transport administration, and transport administration's liability to pay insurer's premiums to the insurer, may be set off against each other under an arrangement between transport administration and the insurer (but such an arrangement is not to affect the extent of transport administration's liability to pay levies to the commission or the insurance agency).
- (3) If an insurer fails to make a payment to transport administration when required under this section, transport



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administration may recover the amount as a debt, together with interest at a rate fixed under a regulation.

## **Division 4                    The statutory funds**

### **28            Motor Accident Insurance Fund**

- (1) There is to be a fund called the Motor Accident Insurance Fund.
- (2) The fund consists of—
  - (a) an amount transferred to the fund under section 33(6) or 106; and
  - (b) the amounts received or recovered by the commission by way of the statutory insurance scheme levy under this Act; and
  - (c) the amounts received or recovered by the commission by way of the hospital and emergency services levy under this Act; and
  - (d) any penalties or penalty interest imposed under this Act; and
  - (e) income derived from the investment of the fund.
- (3) The fund is to be applied to meet the cost of administering this Act, including—
  - (a) all expenditure by the commission in the exercise of statutory powers and functions (including payments to be made under section 106(4) but not costs otherwise associated with the Nominal Defendant scheme); and
  - (b) payments relating to an advance of amounts under subsection (6), that are payable under the terms of the advance.
- (4) The amounts received into the fund by way of the hospital and emergency services levy are to be applied towards providing public hospital services and public emergency services and,

for that purpose, are to be paid to relevant government entities.

- (5) The Treasurer may decide at which periodic intervals, and in what proportions, the amounts are to be paid.
- (6) The Treasurer may advance amounts to the fund on the terms the Treasurer considers appropriate.

## **29 Nominal Defendant Fund**

- (1) There is to be a fund called the Nominal Defendant Fund.
- (2) The following amounts are to be paid into the fund—
  - (a) the amounts to be paid by the Treasurer to the credit of the fund under section 106;
  - (b) the income derived from the Nominal Defendant levy;
  - (c) the amounts paid to, or recovered by, the Nominal Defendant under this Act;
  - (d) amounts advanced to the fund under this section;
  - (e) income derived from investment of the fund.
- (3) The following amounts are to be paid from the fund—
  - (a) the costs of carrying out the functions of the Nominal Defendant under the statutory insurance scheme;
  - (b) amounts required to satisfy liabilities of the Nominal Defendant for claims;
  - (c) payments relating to an advance of amounts under subsection (4), that are payable under the terms of the advance.
- (4) The Treasurer may advance amounts to the fund on the terms the Treasurer considers appropriate.

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## Division 5                      Transfer of CTP business

### 30            Transfer of CTP business

- (1) The commission may, on the joint application of 2 licensed insurers, approve the transfer of CTP business from one insurer (the *transferor*) to the other (the *transferee*).
- (2) An approval under this section may be given on the conditions the commission considers appropriate.
- (3) Notice of an approval under this section must be published in the gazette.
- (4) On publication of the notice of approval in the gazette—
  - (a) all rights and liabilities subject to the transfer are transferred to, and become rights and liabilities of, the transferee; and
  - (b) this Act operates as if the transferee had been selected as the insurer under the CTP policies subject to the transfer; and
  - (c) if the transferor's entire CTP business is transferred—the transferor's licence is withdrawn; and
  - (d) if part of the transferor's CTP business is transferred—the transfer is an adequate reason for withdrawing the licence.

*Editor's note—*

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

## **Part 4                      Claims**

### **Division 1                The insurer**

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

- (1) If personal injury is caused by, through or in connection with a motor vehicle, the insurer for the statutory insurance scheme is to be decided in accordance with the following principles—
  - (a) if the motor vehicle is an insured motor vehicle—the insurer under the CTP insurance policy is, subject to this division, the insurer;
  - (b) if the motor vehicle is not insured but a self-insurer is the registered owner—the self-insurer is the insurer;
  - (c) if the motor vehicle is not insured and a self-insurer is not the registered owner—the Nominal Defendant is the insurer;
  - (d) if the motor vehicle, or insurer under its CTP insurance policy, can not be identified—the Nominal Defendant is the insurer.
- (2) In any legal proceedings, it is to be presumed that a motor vehicle can not be identified if it is established by affidavit or oral evidence that proper inquiry and search have been made and have failed to establish the identity of the motor vehicle.
- (3) If a trailer is attached to a motor vehicle registered in Queensland or runs out of control after becoming accidentally detached from a motor vehicle registered in Queensland, the trailer must be regarded as part of the motor vehicle and the insurer of the motor vehicle is the insurer of the trailer but, in any other case, the insurer of a trailer registered in Queensland is the Nominal Defendant whose liability is to be decided as if the Nominal Defendant had issued a separate CTP insurance policy for the trailer.
- (4) However—

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- (a) if a motor vehicle accident involving a trailer with a GVM of more than 4.5 tonnes happens outside the State—the Nominal Defendant is not the insurer of the trailer under subsection (3); and
  - (b) if a CTP insurance policy (other than a supplementary policy) is issued for, or expressly extends to, a trailer—the insurer under the policy is the insurer of the trailer for all purposes.
- (5) In this section—

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

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

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

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

- (1) The Nominal Defendant's liability for personal injury caused by, through or in connection with a motor vehicle is the same as if the Nominal Defendant had been, when the motor vehicle accident happened, the insurer under a CTP insurance policy under this Act for the motor vehicle.
- (2) If the insurer under a CTP insurance policy becomes insolvent, the Nominal Defendant becomes the insurer under CTP policies in force under this Act for which the insolvent insurer was formerly the insurer unless the policies are transferred to some other licensed insurer.

- (3) The Nominal Defendant is liable for personal injury arising out of a motor vehicle accident outside Queensland only if—
  - (a) the liability arises under subsection (2); or
  - (b) the personal injury is caused by, through or in connection with a motor vehicle that is gratuitously insured under section 23(7).
- (4) Subject to subsection (5), if the Nominal Defendant Fund proves insufficient to meet the liabilities of the Nominal Defendant under subsection (2), the commissioner must make payments from the Motor Accident Insurance Fund to meet the deficiency.
- (5) The total payments from the Motor Accident Insurance Fund under subsection (4) and under section 106(4), including payments made under section 106(4) before the commencement of this subsection, can not be more than the amount that was transferred to the fund under section 106(3).
- (6) If an amount is recovered or received by the Nominal Defendant, by way of an action or a claim relating to the insolvency of an insurer under a CTP insurance policy, the Treasurer may, by written notice to the Nominal Defendant, direct it to transfer an amount, not exceeding the amount recovered or received, to the Motor Accident Insurance Fund.

*Editor's note—*

See section 61 (Nominal Defendant's rights of recourse against insurer).

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

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

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

- (1) A person who proposes to make a claim (including a person acting in a representative capacity) must ensure that appropriate notice of the accident has been given to a police officer.
- (2) Appropriate notice of a motor vehicle accident is—
  - (a) the giving of required particulars under the *Transport Operations (Road Use Management) Act 1995*, section 93(4); or
  - (b) if (and only if) particulars have not been given as required under that section—a notice under this section in a form approved by the commission.
- (3) A notice under this section must—
  - (a) state the intending claimant’s full name, date of birth, residential address and a telephone number at which the claimant can be contacted; and
  - (b) state the date, time and place of the accident and describe how it happened; and
  - (c) identify all motor vehicles and drivers involved in the accident (as far as known to the intending claimant); and
  - (d) state the names and residential addresses of all persons injured in the accident (as far as known to the intending claimant); and
  - (e) state the names and residential addresses of all persons who witnessed the accident (as far as known to the intending claimant); and
  - (f) state the general nature of the personal injury to the intending claimant.

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

- (1) The driver, person in charge or owner of a motor vehicle involved in an accident out of which personal injury arises must, at the request of the insurer of a vehicle involved in the accident, provide any information about the accident that the insurer may reasonably require within 1 month after receiving the request.
- (2) A person must not, without reasonable excuse, fail to comply with a request for information under subsection (1).  
Maximum penalty—10 penalty units.
- (3) A person asked to provide information under subsection (1) has a reasonable excuse for not complying with the request if the information would tend to incriminate the person.
- (4) A person, if not the driver, owner, or person in charge of the motor vehicle insured by the insurer asking for information, need not comply with the request unless it was made with the agreement of the insurer of the motor vehicle.
- (5) An insurer who asks for information under this section must disclose fully in the request the nature of the insurer's interest in the motor vehicle accident.

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

- (1) A person who receives a claim or demand, or notice of a claim or demand, about personal injury arising out of a motor vehicle accident must, within 1 month after receiving it, give the claim, demand or notice to the insurer of the motor vehicle under the statutory insurance scheme.  
Maximum penalty—10 penalty units.
- (2) A person who receives a writ or other process of a court about a claim must immediately give it to the insurer of the motor vehicle under the statutory insurance scheme.  
Maximum penalty—10 penalty units.



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## **Division 2A                      Law practice certificates generally and certificates before notice of claim**

### **36A      Law practice retained by claimant before notice of claim**

- (1) This section applies if a law practice is retained by a claimant to act in relation to the claimant's claim before the claimant has given notice of the claim under section 37.
- (2) The supervising principal of the law practice must—
  - (a) complete a law practice certificate for the claim; and
  - (b) give the certificate to the claimant before the claimant gives notice of the claim under section 37.

Maximum penalty—300 penalty units.

*Note—*

See also section 36C.

- (3) In this section—  
*claimant* includes a potential claimant.

### **36B      Meaning of *law practice certificate***

- (1) A *law practice certificate* is a certificate in a form approved by the commission that states the matters mentioned in subsections (2) to (4).
- (2) The certificate must state—
  - (a) the supervising principal and each associate of the law practice have not—
    - (i) given, agreed to give or allowed or caused someone else to give consideration to another person for a claim referral or potential claim referral for the claim in contravention of section 74(1); or
    - (ii) received, agreed to receive or allowed or caused someone else to receive consideration from

another person for a claim referral or potential claim referral for the claim in contravention of section 74(2); or

- (b) if section 74 does not apply to the supervising principal or an associate of the law practice—the circumstances mentioned in section 74(3) why it does not apply.
- (3) Also, the certificate must state—
- (a) the supervising principal and each associate of the law practice have not personally approached or contacted the claimant and solicited or induced the claimant to make the claim in contravention of section 75; or
  - (b) if section 75 does not apply to the supervising principal or an associate of the law practice—the circumstances mentioned in section 75(3) why it does not apply.
- (4) Further, if the claim is a speculative personal injury claim, the certificate must state the costs agreement relating to the claim complies with section 79 or with the *Legal Profession Act 2007*, section 347.
- (5) The law practice certificate must be signed by the supervising principal and verified by statutory declaration.
- (6) To remove any doubt, it is declared that this section does not require or permit the supervising principal of a law practice to give information about communication with a claimant that is subject to legal professional privilege.
- (7) In this section—

***claimant*** includes a potential claimant.

***claim referral*** see section 74(4).

***consideration***, for a claim referral or potential claim referral, see section 74A.

***speculative personal injury claim*** see the *Legal Profession Act 2007*, section 346.

***supervising principal*** includes a person who is completing a certificate under section 36C.

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**36C Supervising principal cannot complete law practice certificate or notice**

- (1) This section applies if the supervising principal of a law practice cannot comply with section 36A, 36E, 37AB, 39A or 41A in relation to a claim.
- (2) Either of the following may complete and give the law practice certificate or notice mentioned in section 36E(3) for the supervising principal to satisfy the section—
  - (a) another principal of the law practice;
  - (b) if the supervising principal is the only principal of the law practice—a lawyer nominated by the supervising principal.

**36D False or misleading law practice certificate**

- (1) A supervising principal of a law practice must not sign, or give to a claimant or an insurer, a law practice certificate the principal knows is false or misleading in a material particular.

Maximum penalty—300 penalty units.

- (2) In this section—

*claimant* includes a potential claimant.

*supervising principal* includes a person who is completing a certificate under section 36C.

**36E Law practice referral through sale of business**

- (1) This section applies if—
  - (a) a law practice (the *current practice*) sells all or part of the law practice's business to another law practice (the *new practice*); and
  - (b) as part of the sale, a claimant is referred to the new practice; and

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- (c) the claimant has not given notice of the claim under section 37 before the claimant is referred to the new practice.
- (2) The supervising principal of the current practice must, before the referral occurs—
  - (a) complete a law practice certificate for the claim; and
  - (b) give the law practice certificate to the new practice and a copy of the certificate to the claimant.

Maximum penalty—300 penalty units.

*Note—*

See also section 36C.

- (3) If the new practice does not receive the law practice certificate mentioned in subsection (2), the supervising principal of the new practice must, as soon as practicable—
  - (a) complete a notice that states the new practice has not received the certificate; and
  - (b) give the notice to the commission.
- (4) In this section—  
*claimant* includes a potential claimant.

## **Division 3                      Claims procedures**

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

- (1) Before bringing an action in a court for damages for personal injury arising out of a motor vehicle accident, a claimant must give written notice of the claim to the insurer or 1 of the insurers, against which the action is to be brought—
  - (a) containing a statement of the information required under a regulation; and
  - (b) authorising the insurer to have access to records and sources of information relevant to the claim specified under a regulation; and

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- (c) authorising the insurance agency to exchange information about the claimant with an entity prescribed by regulation under the National Injury Act, section 19(3)—
    - (i) in the event that the insurer makes an application under that Act for the claimant in relation to the injury; and
    - (ii) for the purpose of the insurance agency performing its functions under that Act; and
  - (d) if a law practice is retained by the claimant to act in relation to the claim, accompanied by—
    - (i) a law practice certificate for the claim from the supervising principal of the law practice; and
    - (ii) if the claimant has received a copy of a law practice certificate for the claim under section 36E—the copy of the certificate; and
  - (e) accompanied by the documents prescribed by regulation.
- (2) The notice must be given—
- (a) if it is to be given to the Nominal Defendant because the motor vehicle can not be identified—within 3 months after the motor vehicle accident; or
  - (b) in any other case—within the period ending on the earlier of the following dates—
    - (i) 9 months after the motor vehicle accident or, if symptoms of the injury are not immediately apparent, the first appearance of symptoms of the injury;
    - (ii) 1 month after the claimant first consults a lawyer about the possibility of making a claim.
- (3) If notice of a 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

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

- (4) If 2 or more motor vehicles were involved in the motor vehicle accident, the insurer to which notice is given under subsection (1) must, within 7 days after receiving it, give a copy of the notice to any other insurer of a motor vehicle involved in the motor vehicle accident.
- (5) In this section—  
*supervising principal* includes a person who has completed a certificate under section 36C.

### **37AA Law practice certificate not given**

- (1) This section applies if—
  - (a) the supervising principal of a law practice in relation to a claim fails to give a law practice certificate to the claimant as required under section 36A; and
  - (b) because of the principal's failure, the claimant—
    - (i) cannot comply with the requirements of section 37(1) within the period mentioned in section 37(2); and
    - (ii) terminates in writing the engagement of the law practice to act for the claimant in relation to the claim.
- (2) The principal must, within 14 days after the termination, refund to the claimant all fees and costs, including disbursements, paid by the claimant in relation to the claim.
- (3) In this section—  
*claimant* includes a potential claimant.

### **37AB Law practice retained by claimant after notice of claim**

- (1) This section applies if—

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- (a) a law practice is retained by a claimant to act in relation to the claimant's claim; and
  - (b) the claimant has given notice of the claim under section 37 before retaining the law practice.
- (2) The supervising principal of the law practice in relation to the claim must within 1 month after the practice is retained—
- (a) complete a law practice certificate for the claim; and
  - (b) give the law practice certificate to the insurer.

Maximum penalty—300 penalty units.

*Note—*

See also section 36C.

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

- (1) An insurer to whom notice of a claim is given may ask the claimant to provide additional information about the claim and the circumstances out of which it arises.
- (2) Without limiting subsection (1), an insurer may, for considering any of the following matters, ask the claimant to provide additional information about the injury the subject of the claim or about the circumstances in which the claim is made—
  - (a) whether the injury is a serious personal injury in relation to which the National Injury Act applies;
  - (b) whether the claimant is an eligible person.
- (3) The claimant must, within 1 month after the date of the request, provide the information to the insurer in a form approved by the commission (an *additional information form*).

### **37B Witness information request made by insurer**

- (1) An insurer may, by written notice, ask an emergency service to give the insurer information to help the insurer identify or

contact a person who witnessed a motor vehicle accident if the insurer—

- (a) is given notice of a claim for the motor vehicle accident; and
  - (b) reasonably believes the information is necessary—
    - (i) to decide the accuracy of matters relating to the claim; and
    - (ii) to help the insurer resolve the claim under this division.
- (2) If an insurer asks an emergency service for information under this section, the emergency service may give the information to the insurer despite any other law that would otherwise prohibit or restrict the giving of the information.
- (3) A person, acting honestly, is not liable, civilly, criminally or under an administrative process, for giving information under this section.
- (4) In this section—
- emergency service* means each of the following—
- (a) the Queensland Ambulance Service;
  - (b) the Queensland Fire and Rescue Service;
  - (c) the Queensland Police Service.

### **38 Multiple insurers**

- (1) If 2 or more motor vehicles are involved in a motor vehicle accident in circumstances in which 2 or more insurers may be liable on a claim arising out of the accident, 1 of the insurers (the *claim manager*) is to act for all the insurers under this division and divisions 4, 5, 5A, 6 and 9.
- (2) The claim manager is to be decided by agreement between the insurers within 2 months of the day when notice of the claim was first given under this division or, if agreement is not reached within the period, the claim manager is to be decided under the industry deed.



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- (3) Until it is decided under subsection (2) who the claim manager is to be, the insurer to which notice of claim is first given under this division is the claim manager.
  - (4) The claim manager—
    - (a) may exercise the powers and perform the functions conferred by this division and divisions 4, 5, 5A, 6 and 9 in relation to the claim and the claimant for all insurers liable, or potentially liable, on the claim; and
    - (b) must act as far as practicable with the agreement of the other insurers; and
    - (c) is entitled to contributions from the other insurers on the basis prescribed by the industry deed for expenditure properly incurred as claim manager, and for amounts awarded or paid out on the claim.
  - (5) The claim manager and the other insurers must cooperate with each other and must provide each other with information in their possession relevant to the claim.
  - (6) If the Nominal Defendant is 1 of 2 or more insurers who may be liable on a claim because a motor vehicle that can not be identified was involved in the accident, another insurer may act for the Nominal Defendant under this section only if the Nominal Defendant agrees in writing.

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

- (1) If notice of a claim is given to an insurer under this division or purportedly under this division—
  - (a) the insurer must, within 14 days after receiving the notice give the claimant written notice—
    - (i) stating whether the insurer is satisfied that the notice has been given as required under this division; and
    - (ii) if the insurer is not satisfied—identifying the noncompliance and stating whether the insurer waives compliance with the requirements; and

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

- (2) If an insurer to which notice of a claim is given under this division or purportedly under this division is not, for the purposes of the claim the insurer of the motor vehicle to which the claim relates under the statutory insurance scheme, the insurer must, instead of responding to the notice under subsection (1), give the claimant written notice denying that the insurer is the insurer under the statutory insurance scheme.
- (3) If notice of a claim is given to an insurer under this division or purportedly under this division, and the insurer does not respond to the notice within 14 days after receiving it, the insurer is conclusively presumed to be satisfied the notice was given as required under this division.
- (4) However, the insurer's failure to respond to the notice does not prevent the insurer from later denying that the insurer is the insurer of the motor vehicle to which the claim relates under the statutory insurance scheme, but the insurer is liable to compensate the claimant and the insurer against which the claim properly lies for prejudice resulting from the insurer's failure to respond to the notice under subsection (2).
- (5) A claimant's failure to give notice of a claim as required under this division prevents the claimant from proceeding further with the claim unless—
  - (a) the insurer—
    - (i) has stated that the insurer is satisfied notice has been given as required under this division or the claimant has taken reasonable action to remedy the noncompliance; or
    - (ii) is presumed to be satisfied notice has been given as required under this division; or
  - (b) the insurer has waived compliance with the requirement; or
  - (c) the court, on application by the claimant—
    - (i) declares that the claimant has remedied the noncompliance; or

- (ii) authorises further proceedings based on the claim despite the noncompliance.
- (6) An order of the court under subsection (5)(c) may be made on conditions the court considers necessary or appropriate to minimise prejudice to an insurer from the claimant's failure to comply with requirements of this division.
- (7) If a claimant does not comply with the requirements of this division, a court before which the claimant brings an action for damages on the claim—
  - (a) may, on the insurer's application, award in the insurer's favour costs (including legal and investigation costs) reasonably incurred by the insurer because of the claimant's default; and
  - (b) may only award interest in the claimant's favour for a period for which the claimant was in default if the court is satisfied there is a reasonable excuse for the default.
- (8) If a claim against the Nominal Defendant is barred because the claim relates to personal injury caused by, through or in connection with a motor vehicle that can not be identified and the claimant failed to give notice of claim under this division within 9 months after the motor vehicle accident, the Nominal Defendant can not waive compliance with the requirement to give notice within the time allowed by this division, nor can the court give leave to bring a proceeding in a court despite the noncompliance.
- (9) This section is subject to section 39A.

**39A Duty to give law practice certificate if waiver or presumption**

- (1) This section applies if—
  - (a) a claimant gives notice of the claimant's claim that does not comply with section 37(1)(d)(i); and
  - (b) the insurer for the claim—

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- (i) waives compliance with the requirements under this division for giving notice of the claim; or
    - (ii) is presumed to be satisfied notice has been given as required under this division.
  - (2) If the supervising principal of a law practice or a person mentioned in section 36C(2) acting for the supervising principal gave the claimant a law practice certificate for the claim under section 36A but the claimant has not given the certificate to the insurer, the supervising principal must give a copy of the certificate to the insurer as soon as practicable.
  - (3) Subsection (4) applies if—
    - (a) the supervising principal of a law practice retained by the claimant in relation to the claimant's claim or a person mentioned in section 36C(2) acting for the supervising principal did not give the claimant a law practice certificate for the claim under section 36A; and
    - (b) the claimant has not subsequently given the insurer a law practice certificate for the claim from the supervising principal or the person.
  - (4) The supervising principal must, within a month after the claimant is notified of the waiver or the presumption takes effect—
    - (a) complete a law practice certificate for the claim; and
    - (b) give the certificate to the insurer and a copy of the certificate to the claimant.

Maximum penalty for subsection (4)—300 penalty units.

*Note—*

See also section 36C.

## **40 Minority and legal disabilities**

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

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- (2) A period within which the obligation is to be complied with begins when the claimant's minority or legal incapacity ends.
- (3) However, this section does not prevent a claimant, or a person acting for the claimant, from complying with an obligation under this division during the claimant's minority or legal incapacity.

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

- (1) Within 6 months after an insurer receives notice of a claim under this division, the insurer must—
  - (a) take reasonable steps to inform itself of the circumstances of the motor vehicle accident out of which the claim arises; and
  - (b) give the claimant written notice stating—
    - (i) whether liability is admitted or denied; and
    - (ii) if contributory negligence is claimed—the degree of the contributory negligence expressed as a percentage; and
    - (iii) if the claimant is not a participant in the injury insurance scheme but the insurer considers the claimant may be an eligible person—that the claimant may be an eligible person; and
  - (c) if the claimant made an offer of settlement in the notice of claim, inform the claimant whether the insurer accepts or rejects the offer or, if the claimant did not make an offer of settlement in the notice, invite the claimant to make a written offer of settlement.
- (2) As soon as practicable after an insurer receives notice of a claim under the division, the insurer must—
  - (a) make a fair and reasonable estimate of the damages to which the claimant would be entitled in an action against the insurer; and
  - (b) make a written offer (or counter offer) of settlement to the claimant setting out in detail the basis on which the

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offer is made, or settle the claim by accepting an offer made by the claimant.

- (3) If a notice of claim is not given as required under this division, the insurer is taken to receive the notice when—
  - (a) the insurer gives the claimant notice that the insurer waives compliance with the requirement that has not been complied with or is satisfied the claimant has taken reasonable action to remedy the noncompliance; or
  - (b) the court makes a declaration that the claimant is taken to have remedied the noncompliance, or gives leave to bring a proceeding based on the claim despite the noncompliance.
- (4) An offer (or counter offer) of settlement must be accompanied by a copy of medical reports, assessments of cognitive, functional or vocational capacity, or other material in the offerer's possession that may help the person to whom the offer is made make a proper assessment of the offer.
- (5) An insurer or claimant to whom a written offer (or counter offer) of settlement is made must (unless a response to the offer is to be made under subsection (1)(c)) respond in writing to the offer, within 3 months after receiving it, indicating acceptance or rejection of the offer.
- (6) An admission of liability by an insurer under this section—
  - (a) is not binding on the insurer on another claim arising out of the same motor vehicle accident; and
  - (b) is not binding on the insurer at all if it later appears the admission was induced by fraud.

#### **41A Supervising principal must complete law practice certificate on settlement or judgment**

- (1) This section applies if—
  - (a) a law practice is retained by a claimant to act in relation to the claimant's claim; and
  - (b) either—

- (i) the claimant or the insurer accepts an offer (or counter offer) of settlement; or
  - (ii) judgment is given on the claim.
- (2) The supervising principal of the law practice in relation to the claim must—
  - (a) complete a law practice certificate for the claim; and
  - (b) give the certificate to the insurer and a copy of the certificate to the claimant within 7 days after the acceptance or judgment.

Maximum penalty—300 penalty units.

*Note—*

See also section 36C.

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

- (1) Once liability has been admitted, it is the duty of the insurer to make payments to or for the claimant for private hospital, medical and pharmaceutical expenses reasonably and appropriately incurred because of the injury or a proportionate part of the expenses reflecting the extent of the insurer's responsibility (assuming the claimant to be guilty of contributory negligence as asserted by the insurer).
- (2) A payment must be made under this section on presentation of an account made up, and verified, as required by regulation.
- (3) However, the insurer is not required to make a payment in relation to the claimant's treatment, care and support needs as a result of the injury if—
  - (a) the claimant is, when the needs arise, a participant in the injury insurance scheme in relation to a serious personal injury resulting from the motor vehicle accident the subject of the claim; or
  - (b) the needs arise after an amount is paid to the claimant, or a person acting for the claimant, under the National Injury Act, section 44(3)(a) in relation to a personal



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injury resulting from the motor vehicle accident the subject of the claim.

- (4) Subsection (3) applies—
  - (a) whether or not the injury the subject of the claim is a serious personal injury; and
  - (b) whether or not the treatment, care and support needs are an approved service for the claimant under the National Injury Act; and
  - (c) whether or not the insurance agency must, under that Act, make a payment in relation to the treatment, care and support needs; and
  - (d) whether or not the treatment, care and support is provided without charge.
- (5) An insurer may recover payments made under this section if it later appears that the admission of liability was induced by fraud.

#### **43 Insured person not to admit liability**

- (1) An insured person must not, without the insurer's written agreement—
  - (a) make an admission of liability on a claim; or
  - (b) settle, or offer to settle, a claim; or
  - (c) make a payment, or offer or promise to make a payment, on a claim.
- (2) A contract, offer or promise made in contravention of this section does not bind the insurer.
- (3) This section does not prevent an insured person from providing a police officer with information reasonably required to prepare a report on a motor vehicle accident.
- (4) An insured person incurs no civil liability to an insurer through contravention of this section.

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

- (1) If a claim is made against an insured person, the insurer—
  - (a) must undertake the conduct and control of negotiations and legal proceedings related to the claim; and
  - (b) may compromise or settle the claim or legal proceedings related to the claim and act for the insured person in any other way in relation to the claim.
- (2) The insured person must sign any documents necessary to give effect to this section and, if the insured person does not sign or is dead, absent or can not be found, the insurer may sign for the insured person.
- (3) Nothing said or done by an insurer in connection with a claim, or legal proceedings related to a claim, is an admission of liability in, or otherwise prejudices or affects, another claim or proceedings arising out of the same circumstances.

### **Division 4 Cooperation between claimant and insurer**

#### **45 Duty of claimant to cooperate with insurer**

- (1) A claimant must cooperate with the insurer and, in particular—
  - (a) must provide the insurer with copies of reports and other documentary material (including written statements made by the claimant or by witnesses) in the claimant's possession about the circumstances of the accident or the claimant's medical condition or prospects of rehabilitation; and
  - (b) must give information reasonably requested by the insurer about—
    - (i) the circumstances of the accident out of which the claim arose; and

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- (ii) the nature of the injuries resulting from the accident and of any consequent disabilities and financial loss; and
  - (iii) if applicable—the medical treatment and rehabilitation services the claimant has sought or obtained; and
  - (iv) the claimant’s medical history (as far as it is relevant to the claim), and any other claims for compensation for personal injury made by the claimant.
- (2) The claimant must—
- (a) provide the copies of reports and other documentary materials within 1 month after giving notice of the claim or, if the reports or material come into the claimant’s possession later, within 1 month after they come into the claimant’s possession; and
  - (b) respond to a request under subsection (1)(b) within 1 month after receiving it.
- (3) If, after notice of a claim is given to the insurer but before the claim is resolved, the claimant becomes aware of a significant change in the claimant’s medical condition, or in other circumstances, relevant to the extent of the claimant’s disabilities or financial loss, the claimant must, within 1 month after becoming aware of the change, inform the insurer of the change.
- (7) Any information provided by a claimant under this section must be verified by statutory declaration if the insurer requires it to be verified by statutory declaration.

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

- (1) The commission—
- (a) may establish a panel of experts for reporting on the medical condition of claimants and their prospects of rehabilitation (the *official panel of medical experts*); and

- (b) may revise the membership of the panel from time to time by adding to, or removing, the names of the experts who constitute the panel.
- (2) In deciding on the composition of the panel, the commission—
  - (a) must consult with the professional bodies with which consultation is required under a regulation; and
  - (b) may only include an expert on the panel if—
    - (i) the expert’s inclusion is endorsed by the relevant professional bodies; or
    - (ii) the commission is satisfied there is good reason for inclusion of the expert on the panel despite the absence of endorsement by the relevant professional bodies.

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

- (1) An insurer and a claimant (or intending claimant) may jointly arrange for an expert report on—
  - (a) the motor vehicle accident; or
  - (b) the claimant’s medical condition or prospects of rehabilitation.
- (2) Neither an insurer nor a claimant is under any obligation to agree to a proposal to obtain a report under this section.
- (3) The person by whom an expert report is obtained is to be a person, agreed to by both parties, with appropriate qualifications and experience in the relevant field.
- (4) The person by whom an expert report is prepared under this section must provide both parties with a copy of the report.

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

- (1) This section applies if the insurer wants to obtain an expert report on the claimant's medical condition or prospects of rehabilitation but fails to obtain the claimant's agreement.
- (2) The claimant must comply with a request by the insurer to undergo, at the insurer's expense—
  - (a) a medical examination by a doctor to be selected by the claimant from a panel of at least 3 doctors nominated in the request; or
  - (b) an assessment of cognitive, functional or vocational capacity by an expert to be selected by the claimant from a panel of at least 3 experts with appropriate qualifications and experience nominated by the insurer in the request.
- (3) However, a claimant is not obliged to undergo an examination under this section if it is unreasonable or unnecessarily repetitious.
- (4) A panel of doctors or other experts nominated under subsection (2) may (but need not) include doctors or other experts from the official panel of medical experts.
- (5) If 3 doctors or experts with appropriate qualifications and experience are not available for inclusion on a panel under subsection (2), the number on the panel may be reduced to 2.

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

- (1) If an expert report is obtained by agreement between the claimant and the insurer, and the claimant is liable for the cost of obtaining the report, the insurer must, at the claimant's request, reimburse the claimant for the reasonable cost of obtaining the report.
- (2) However, a claimant's right to reimbursement under this section is subject to the terms of any agreement between the claimant and the insurer.

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

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

- (1) The insurer must cooperate with a claimant and, in particular—
  - (a) must provide the claimant with copies of reports and other documentary material in the insurer's possession about the circumstances of the accident or the claimant's medical condition or prospects of rehabilitation; and
  - (b) must, at the claimant's request, give the claimant information that is in the insurer's possession, or can be found out from the insured person, about the circumstances of, or the reasons for, the accident.
- (2) The insurer must—
  - (a) provide the claimant with copies of reports and other documentary materials within 1 month after receiving the notice of claim under division 3 or, if the reports or materials come into the insurer's possession later, within 1 month after they come into the insurer's possession; and
  - (b) respond to a request under subsection (1)(b) within 1 month after receiving it.
- (3) If the claimant requires information provided by an insurer under this section to be verified by statutory declaration, the information must be verified by statutory declaration.
- (4) If an insurer fails, without proper reason, to comply fully with a request under this section, the insurer is liable for costs to the claimant resulting from the failure.

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**48 Non-disclosure of certain material**

- (1) A claimant or insurer is not obliged to disclose information or documentary material under this division if the information or documentary material is protected by legal professional privilege.
- (2) However, investigative reports, medical reports and reports relevant to the claimant's rehabilitation must be disclosed even though protected by legal professional privilege but they may be disclosed with the omission of passages consisting only of statements of opinion.
- (3) If an insurer has reasonable grounds to suspect a claimant of fraud, the insurer may withhold from disclosure under this division information or documentary material (including reports that would, apart from this subsection, have to be disclosed under subsection (2)) to the extent the disclosure would alert the claimant to the discovery of the grounds of suspicion or could help in the furtherance of fraud.
- (4) An insurer must not withhold information or documentary material from disclosure under this division without having proper grounds.

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

**49 Privilege**

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

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

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

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

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

## **Division 5                      Rehabilitation**

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

- (1) An insurer may make rehabilitation services available to a claimant on the insurer's own initiative or at the claimant's request.
- (2) An insurer that makes rehabilitation services available to a claimant before admitting or denying liability on the claim must not be taken, for that reason, to have admitted liability.
- (3) Once liability has been admitted on a claim, or the insurer has agreed to fund rehabilitation services without making an admission of liability, the insurer must, at the claimant's request, ensure that reasonable and appropriate rehabilitation services are made available to the claimant.
- (3A) However, the insurer is not required to make rehabilitation services available to the claimant in relation to the claimant's treatment, care and support needs as a result of the claimant's injury if—
  - (a) the claimant is, when the needs arise, a participant in the injury insurance scheme in relation to a serious personal injury resulting from the motor vehicle accident the subject of the claim; or
  - (b) the needs arise after an amount is paid to the claimant, or a person acting for the claimant, under the National Injury Act, section 44(3)(a) in relation to a personal injury resulting from the motor vehicle accident the subject of the claim.
- (3B) Subsection (3A) applies—



- (a) whether or not the injury the subject of the claim is a serious personal injury; and
  - (b) whether or not the treatment, care and support needs are an approved service for the claimant under the National Injury Act; and
  - (c) whether or not the insurance agency must, under that Act, make a payment in relation to the treatment, care and support needs; and
  - (d) whether or not the treatment, care and support is provided without charge.
- (4) If the insurer intends to ask the court to take the cost of rehabilitation services into account in the assessment of damages, the insurer must, before providing the rehabilitation services, give the claimant a written estimate of the cost of the rehabilitation services and a statement explaining how, and to what extent, the assessment of damages is likely to be affected by the provision of the rehabilitation services.
- (5) The claimant may, if not satisfied that the rehabilitation services made available under this section are reasonable and appropriate—
- (a) apply to the commission to appoint a mediator to help resolve the questions between the claimant and the insurer; or
  - (b) apply to the court to decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate.
- (5A) An application for appointment of a mediator under subsection (5)(a) must—
- (a) be made in writing; and
  - (b) give details of any attempts made by the applicant to resolve the matter in dispute.
- (5B) The fees and expenses of a mediator appointed under subsection (5)(a) are to be paid as agreed between the parties or, in the absence of agreement, by the parties in equal proportions.

- (5C) An application may be made to the court under subsection (5)(b) whether or not there has been an earlier attempt to resolve the questions between the claimant and the insurer by mediation.
- (5D) On an application under subsection (5)(b), the court may decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate and make consequential orders and directions.
- (6) The insurer must bear (or reimburse) the cost of providing rehabilitation services under this section unless the insurer's liability is reduced—
- (a) by agreement with the claimant; or
  - (b) by order of the court under subsection (8).
- (7) The insurer may, if of the opinion that the cost of rehabilitation services is unreasonable—
- (a) apply to the commission to appoint a mediator to help resolve the questions between the claimant and the insurer; or
  - (b) apply to the court to decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate or to decide to what extent the insurer should contribute to the cost of rehabilitation services.
- (7A) An application for appointment of a mediator under subsection (7)(a) must—
- (a) be made in writing; and
  - (b) give details of any attempts made by the applicant to resolve the matter in dispute.
- (7B) The fees and expenses of a mediator appointed under subsection (7)(a) are to be paid as agreed between the parties or, in the absence of agreement, by the parties in equal proportions.
- (7C) An application may be made to the court under subsection (7)(b) whether or not there has been an earlier

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attempt to resolve the questions between the insurer and the claimant by mediation.

- (8) On an application under subsection (7)(b), the court may decide the questions raised on the application and make consequential orders and directions.
- (9) The cost to the insurer of providing rehabilitation services under this section is to be taken into account in the assessment of damages on the claim if (and only if) the insurer gave a statement to the claimant, as required under subsection (4), explaining how and to what extent the assessment of damages was likely to be affected by the provision of the rehabilitation services.
- (9A) If the cost of rehabilitation services is to be taken into account in the assessment of damages, the cost is taken into account as follows—
  - (a) the claimant's damages are first assessed (without reduction for contributory negligence) on the assumption that the claimant has incurred the cost of the rehabilitation services as a result of the injury suffered in the accident;
  - (b) any reduction to be made on account of contributory negligence is then made;
  - (c) the total cost of rehabilitation services is then set-off against the amount assessed.

*Example—*

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

- (10) An insurer who is induced by a claimant's fraud to provide rehabilitation services for the claimant may recover the cost to

the insurer of providing the services, as a debt, from the claimant.

## **Division 5A            Compulsory conference**

### **51A    Compulsory conference**

- (1) Before the claimant brings an action in a court for damages for personal injury arising out of a motor vehicle accident, there must be a conference of the parties (the *compulsory conference*).
- (2) Either party may call the compulsory conference—
  - (a) at a time and place agreed between both parties; or
  - (b) if the relevant date has passed—at a reasonable time and place nominated by the party calling the conference.
- (3) For subsection (2)(b), the relevant date is—
  - (a) the date falling 6 months after the claimant gave notice to the insurer of the claim; or
  - (b) if the insurer required additional information, the later of the following—
    - (i) the date falling 6 months after the claimant gave notice to the insurer of the claim;
    - (ii) the date falling 1 month after the claimant gave the insurer the completed additional information form.
- (4) The parties may for good reason dispense with the compulsory conference by agreement.
- (5) The court may, on application by a party—
  - (a) fix the time and place for the compulsory conference; or
  - (b) dispense with the compulsory conference for good reason;

and make any other orders the court considers appropriate in the circumstances.

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

## **51B Procedure at conference**

- (1) The compulsory conference may be held with a mediator if both parties agree.
- (2) An agreement that the compulsory conference is to be held with a mediator must specify how the costs of the mediation are to be borne.
- (3) The mediator must be a person independent of the parties—
  - (a) agreed to by the parties; or
  - (b) nominated by the registrar of the court on application under subsection (4).
- (4) If the parties are unable to agree on the appointment of a mediator within 30 days after the date for the compulsory conference is fixed, either party may apply to the registrar of the court for the nomination of a mediator.
- (5) At least 7 days before the compulsory conference is held, each party must give the other party—
  - (a) copies of all documents not yet given to the other party that are relevant to the claim; and
  - (b) a statement verifying that all relevant documents in the possession of the party or the party's lawyer have been given as required; and
  - (c) details of the party's legal representation; and
  - (d) if the party has legal representation—a certificate (a *certificate of readiness*) signed by the party's lawyer to the effect that the party is ready for trial.
- (6) A certificate of readiness must state that—
  - (a) the party is in all respects ready for the conference and the trial; and

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

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- (8) The court may, on application by a party, exempt the party from an obligation to give or disclose material to another party before trial if satisfied that disclosure would alert a person reasonably suspected of fraud to the suspicion or that there is some other good reason why the material should not be disclosed.
  - (9) Each of the following is a conference participant—
    - (a) the claimant or the claimant’s guardian;
    - (b) a person authorised by the insurer to settle the claim on the insurer’s behalf.
  - (10) Each conference participant must (unless he or she has a reasonable excuse) attend the compulsory conference and actively participate in an attempt to settle the claim.
  - (11) The compulsory conference may be conducted, if the parties agree, by telephone, closed-circuit television or another form of communication allowing contemporaneous and continuous communication between the parties.
  - (12) The parties may, by agreement, change the time or place for holding a compulsory conference or adjourn a compulsory conference from time to time and from place to place.

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

- (1) If a claim is not settled at the compulsory conference, each party must (unless the court has dispensed with this obligation) exchange written final offers—
  - (a) at the conference; or
  - (b) if the conference has been dispensed with—within 14 days after the date of the agreement or order dispensing with the conference.
- (2) A written final offer required under subsection (1) is called a ***mandatory final offer***.
- (3) A mandatory final offer for the upper offer limit or less is to be exclusive of costs.

- (4) If a mandatory final offer is for more than the lower offer limit but not more than the upper offer limit, and is accepted, costs are to be calculated and paid on a basis (but subject to limits) stated under a regulation.
- (5) Even though an insurer denies liability altogether, the insurer must nevertheless make a mandatory final offer but, in that event, the offer is to be expressed as an offer of \$nil.
- (6) A mandatory final offer must remain open for 14 days and proceedings must not be started while the offer remains open.
- (7) If the claimant brings a proceeding in a court based on a claim, the claimant must, at the start of the proceeding, file at the court a sealed envelope containing a copy of the claimant's mandatory final offer.
- (8) The insurer must, before or at the time of filing a defence, file at the court a sealed envelope containing a copy of the insurer's mandatory final offer.
- (9) The court must not read the mandatory final offers until it has decided the claim.
- (10) However, the court must (where relevant) have regard to the mandatory final offers in making a decision about costs.
- (11) The court may, on application by a party, dispense with the obligation to make mandatory final offers.

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

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



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- (2) If the parties or the court dispenses with the compulsory conference, an action for damages should be started in the court—
- (a) within 60 days after the later of the following—
    - (i) the date falling 6 months after the date on which the claimant gives notice to the insurer of the claim or if the insurer asks for additional information, the date on which the claimant gives the insurer the completed additional information form;
    - (ii) the date of the agreement or order dispensing with the conference; or
  - (b) within a further period—
    - (i) agreed by the parties within the 60 day period mentioned in paragraph (a); or
    - (ii) fixed by the court on an application made by the claimant within the 60 day period mentioned in paragraph (a).
- (3) However, if the court dispenses with the obligation to make mandatory final offers, an action for damages should be started in the court within a period fixed by the court when giving the dispensation or later.
- (4) The expiry of the time within which an action should be started under subsection (1), (2) or (3) does not prevent the claimant from starting the action but—
- (a) the court may (unless the claimant establishes a reasonable excuse for the delay) order the claimant to pay, in any event, the insurer's costs arising out of the delay; and
  - (b) the court may, on the insurer's application, make an order fixing a time limit within which the action must be started.
- (5) If the claimant fails to start an action in the court within a time limit fixed under subsection (4)(b), the claim is barred.

## **Division 6                      Proceedings in court**

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

- (1) If an action is brought in a court for damages for personal injury arising out of a motor vehicle accident, the action must be brought against the insured person and the insurer as joint defendants.
- (2) However, an action may be brought against the insurer alone if—
  - (a) the insured person can not be identified; or
  - (b) the insured person is dead or it is impracticable to serve the insured person.
- (3) If a claim lies against 2 or more insurers, all insurers become defendants to the action, but the claim manager continues to represent all insurers in the action unless the court gives leave allowing 1 or more of the insurers to be separately represented.
- (4) If judgment is given in favour of the claimant on the claim related to personal injury, the judgment must be given against the insurer and not the insured person (unless the judgment is a judgment for exemplary or punitive damages), and, if the action involves other claims (unrelated to the personal injury), a separate judgment must be given on the other claims.
- (5) It is not a defence to an action under this section for the insurer to prove—
  - (a) that the CTP insurance policy was obtained by fraud, or a material misstatement or non-disclosure; or
  - (b) that the insured person is in breach of a contractual or statutory obligation.
- (6) If legal process related to a proceeding based on a claim is served on the insurer, the insured person is also taken to have been served.

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

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

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

*Editor's note—*

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

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

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

- (1) In an action for damages for personal injury arising out of a motor vehicle accident, summary judgment is not to be given on the basis of the defendant's admissions.
- (2) However, this section does not prevent a court from giving a judgment by consent.

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

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

### **55 Exemplary, punitive or aggravated damages**

- (1) Despite the *Civil Liability Act 2003*, section 52, if the court is of the opinion that the conduct of an insured person is so reprehensible that an award of exemplary, punitive or aggravated damage is justified, the court may give a separate judgment against the insured person for the payment of exemplary, punitive or aggravated damages.
- (2) An insured person is not entitled, under a CTP insurance policy, to an indemnity against an award of exemplary, punitive or aggravated damages.

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

- (1) This section applies if a court awards an amount equal to the upper offer limit or less in damages in a proceeding based on a claim (but it does not apply to the costs of an appellate proceeding).
- (2) If the court awards an amount equal to the lower offer limit 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 an amount equal to the lower offer limit but not more than an amount equal to the upper offer limit in damages, the court must apply the following principles—
- (a) if the amount awarded is less than the claimant's mandatory final offer but more than the insurer's mandatory final offer, costs are to be awarded to the claimant on a standard basis up to the declared costs limit;
  - (b) if the amount awarded is equal to, or more than, the claimant's mandatory final offer, costs are to be awarded to the claimant on the following basis—
    - (i) costs up to the date on which the proceedings started are to be awarded on a standard basis up to the declared costs limit;
    - (ii) costs on or after the date on which the proceedings started are to be awarded on an indemnity basis;
  - (c) if the amount awarded is equal to, or less than, the insurer's mandatory final offer, costs are to be awarded on the following basis—
    - (i) costs up to the date on which the proceedings started are to be awarded to the claimant on a standard basis up to the declared costs limit;
    - (ii) costs on or after the date on which the proceedings started are to be awarded to the insurer on a standard basis.
- (4) Despite the limitations imposed by this section, the court may make an award of costs to compensate a party for costs resulting from a failure by another party to comply with procedural obligations under this part.

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

*Example—*

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

- (6) Unless an award of damages is affected by factors that were not reasonably foreseeable at the time of the exchange of mandatory final offers, the court must not award costs to a party related to investigations or gathering of evidence by the party after—
- (a) the conclusion of the compulsory conference; or
  - (b) if the parties or the court dispenses with a compulsory conference—the date when the parties completed the exchange of mandatory final offers.
- (7) If an award of damages is affected by factors that were not reasonably foreseeable by a party at the time of making the party's mandatory final offer, the court may, if satisfied that it is just to do so, make an order for costs under subsection (2) or (3) as if the reference to a mandatory final offer in the relevant subsection were a reference to a later offer made in the light of the factors that became apparent after the parties completed the exchange of mandatory final offers.

*Example—*

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

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

- (1) If notice of a claim is given under division 3, or an application for leave to bring a proceeding based on a claim is made under division 3, before the end of the period of limitation applying

to the claim, the claimant may bring a proceeding in court based on the claim even though the period of limitation has ended.

- (2) However, the proceeding may only be brought after the end of the period of limitation if it is brought within—
  - (a) 6 months after the notice is given or leave to bring the proceeding is granted; or
  - (b) a longer period allowed by the court.
- (3) If during the last 14 days of the period of limitation, the claimant wants to give a notice of claim under division 3 but is unsure to which insurer the notice should be given, the notice is validly given if it is given to the commission.
- (4) After receiving a notice of claim under subsection (3), the commission must make inquiries to decide the insurer against which the claim properly lies, and pass the notice of claim on to the appropriate insurer.
- (5) If a period of limitation is extended under part 3 of the *Limitation of Actions Act 1974*, this section applies to the period of limitation as extended under the part.

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

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

- (1) This section applies to claims arising out of motor vehicle accidents in Queensland.
- (2) It is Parliament's intention that the limits on liability for damages for personal injury arising out of motor vehicle accidents—
  - (a) are to apply (to the full extent of the Parliament's extraterritorial legislative capacity) whether damages are assessed in Queensland or elsewhere; and

- (b) are to be regarded by courts within and outside Queensland as substantive (rather than procedural) provisions.
- (3) If a claimant, by proceeding in a court outside Queensland, recovers damages in excess of the amount that could have been recovered if the limits on liability referred to in subsection (2) had been applied, the person liable to pay the damages may recover from the claimant the amount by which the amount of the damages exceeds the amount that would have been recovered if the action had been brought in Queensland.

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

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

- (1) If—
  - (a) personal injury arises out of a motor vehicle accident; and
  - (b) the insured person was at the relevant time using the motor vehicle without the owner's authority, without lawful justification or excuse, and without reasonable grounds to believe that the insured person had the owner's authority, or lawful justification or excuse, for using the motor vehicle;

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

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



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

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

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

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

the insurer may recover, as a debt, from the manufacturer or repairer the proportion of the costs reasonably incurred by the insurer on a claim for the personal injury that reasonably

reflects the degree of the manufacturer's or repairer's responsibility for the accident.

- (5) However, it is a defence for the manufacturer or repairer to prove that the driver of the motor vehicle drove it with knowledge of the defect and its likely effect.
- (6) An action by an insurer under this section may be brought separately or by way of third-party proceeding.

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

- (1) An insurer may recover from a claimant or other person who defrauds or attempts to defraud the insurer on a claim any costs reasonably incurred by the insurer because of the fraud.
- (2) In subsection (1)—  
*insurer* includes the Nominal Defendant.

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

- (1) If personal injury arises out of a motor vehicle accident involving an uninsured vehicle, the Nominal Defendant may recover, as a debt, from the owner or driver of the vehicle (or both) any costs reasonably incurred by the Nominal Defendant on a claim for the personal injury.
- (2) It is a defence to an action by the Nominal Defendant under this section—
  - (a) as far as recovery is sought against the owner—for the owner to prove—
    - (i) that the motor vehicle was driven without the owner's authority; or
    - (ii) that the owner believed on reasonable grounds that the motor vehicle was insured; and
  - (b) as far as recovery is sought against the driver—for the driver to prove that the driver believed on reasonable grounds that the driver had the owner's consent to drive

the motor vehicle and that the motor vehicle was insured.

- (3) The Nominal Defendant may bring a proceeding for recovery of costs under this section before the costs have been actually paid in full and, in that case, a judgment for recovery of costs may provide that, as far as the costs have not been actually paid, the right to recover the costs is contingent on payment.
- (4) This section does not affect rights of recovery that the Nominal Defendant may have, apart from this section, against the insured person.

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

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

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

- (1) If an insurer becomes insolvent, any costs reasonably incurred by the Nominal Defendant on claims under CTP insurance policies for which the insolvent insurer was the insurer become debts of the insolvent insurer to the Nominal Defendant and provable in the insolvency.
- (2) The debts of the insolvent insurer that arise under subsection (1) have the same order of priority in the winding-up of the insolvent insurer as if the Nominal Defendant were the insured person under policies of insurance issued by the insolvent insurer.
- (3) If the claim for which costs were incurred by the Nominal Defendant is covered by a contract of reinsurance, the Nominal Defendant succeeds to the rights of the insolvent insurer under the contract of reinsurance.

## **Division 8                      Changes to claim process if insurance agency is contributor**

### **61A    Claim process if insurance agency liable to contribute**

- (1) This section applies in relation to a claim if the insurance agency is liable, under the National Injury Act, section 42, to contribute to the insurer's liability on the claim for treatment, care and support damages.
- (2) The insurer and the insurance agency must, in dealing with the claim—
  - (a) cooperate with each other; and
  - (b) provide each other with information in their possession relevant to the claim, including any documents given to the claimant.
- (3) To the extent any of the following documents relate to, or potentially affect, liability for treatment, care and support damages, the insurer and the insurance agency must agree about the content of the document before the document is given by the insurer to the claimant—
  - (a) a notice given by the insurer under section 41(1)(b);
  - (b) an offer made by the insurer;
  - (c) a notice given by the insurer accepting or rejecting an offer made by the claimant.
- (4) Subsection (5) applies if a document stated in subsection (3) is given by the insurer before the insurance agency becomes liable, under the National Injury Act, section 42, to contribute towards the insurer's liability.
- (5) The insurance agency is not bound by the document.
- (6) For division 5A, other than section 51C—
  - (a) a reference in the division to—
    - (i) the parties includes a reference to the insurance agency; and

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- (ii) either party is a reference to any of the parties; and
  - (iii) both parties or each party is a reference to all of the parties; and
- (b) a person authorised by the insurance agency to settle the claim on the agency's behalf is a conference participant.
- (7) If the claimant brings an action in the court for damages for personal injury, the insurance agency is a defendant to the action.
- (8) In this section—  
*offer* includes a counter offer or mandatory final offer.  
*treatment, care and support damages* see the National Injury Act, schedule 1.

## **Division 9                      Obligation to provide information to insurance agency**

### **61B      Giving insurance agency notice about particular matters**

- (1) This section applies if—
- (a) a claim is made against an insurer for personal injury; and
  - (b) either of the following applies—
    - (i) the claimant is a participant in the injury insurance scheme in relation to the injury;
    - (ii) an application has been made under the National Injury Act for approval for the claimant to participate in the scheme in relation to the injury.
- (2) The insurer must give the insurance agency written notice of the claim.
- (3) Also, the insurer must give the insurance agency written notice of any of the following events in relation to the claim—
- (a) the giving of a notice to the claimant under section 39;

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- (b) the giving of a notice to the claimant under section 41(1)(b);
  - (c) the settlement of the claim by agreement between the claimant and the insurer;
  - (d) a court judgment being given on an action for damages in relation to the claim;
  - (e) the claimant withdrawing the claim or being prevented from proceeding with the claim.
- (4) However, the insurer is not required to give the insurance agency written notice of an event stated in subsection (3) if—
- (a) the event happens after the claimant stops being a participant; or
  - (b) the event happens after the application for approval to participate in the injury insurance scheme is refused; or
  - (c) when the event happens, the insurance agency is liable, under the National Injury Act, section 42, to contribute to the claim.

## **Part 5                      Licensed insurers**

### **Division 1                Licensing of insurers**

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

- (1) A body corporate carrying on the business of general insurance in Queensland may apply to the commission for a licence under this part.
- (2) The application—
  - (a) must be made in writing; and
  - (b) must be accompanied by the information and materials that may be required by regulation.

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- (3) The applicant must provide the commission with the further information or materials that the commission may require to decide the application.
  - (4) The commission may, for example, require the applicant to provide—
    - (a) particulars of shareholders, directors, managers and staff; and
    - (b) copies of returns and accounts that the applicant is required by law to prepare; and
    - (c) particulars of reinsurance arrangements to which the applicant is a party.
  - (5) If an application is made for a licence and, before a licence is granted, there is a change in the matters of which particulars are required in the application, or in the matters contained in a document the applicant is required to give, the body corporate must, within 14 days after the change, give the commission written notice signed by a director giving particulars of the change.
  - (6) A body corporate must not—
    - (a) make an application for a licence; or
    - (b) give to the commission a notice under subsection (5); that is false or misleading in a material particular.Maximum penalty for subsection (6)—150 penalty units.

### **63 Determination of application**

- (1) The commission may, after considering an application for a licence—
  - (a) grant the licence (conditionally or unconditionally); or
  - (b) refuse the application.
- (2) In determining the application, the commission may take into consideration—
  - (a) the suitability of the applicant; and

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- (b) the nature and extent of the applicant's experience in the business of general insurance; and
  - (c) the applicant's paid-up share capital and reserves; and
  - (d) any reinsurance arrangements to which the applicant is a party; and
  - (e) the likely effect on the statutory scheme of licensing the applicant; and
  - (f) any other factors the commission considers relevant.
- (3) A licence may be granted only if the commission is satisfied that—
- (a) the applicant has enough financial resources to carry on business as a licensed insurer; and
  - (b) the applicant has adequately experienced staff available in Queensland to administer personal injury claims under the CTP insurance scheme; and
  - (c) the applicant is in all other respects an appropriate person to hold a licence; and
  - (d) licensing the applicant would not adversely affect the efficiency and effectiveness of the statutory insurance scheme.
- (4) A licence must not be granted until the insurer has executed the industry deed.
- (5) Notice of the grant of a licence under this part, specifying the date on which the licence takes effect, must be given in the gazette.

## **64 Conditions of licence**

- (1) A licence is subject to conditions prescribed by regulation.
- (2) A licence may be granted subject to other conditions that the commission considers appropriate and specifies in the licence.
- (4) The commission may, by written notice given to a licensed insurer—



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- (a) impose conditions or further conditions to which the licence is to be subject; or
  - (b) amend or repeal conditions previously imposed.
- (5) A condition can not be imposed to give a particular advantage over other licensed insurers.
- (6) A licensed insurer must not contravene a condition of the licence.
- Maximum penalty—300 penalty units.
- (7) A court by which a licensed insurer is convicted of an offence against subsection (6) may, by order, withdraw the licence.

## **65 Industry deed**

- (1) A licensed insurer is bound by the industry deed.
- (2) The industry deed may—
  - (a) require licensed insurers to make disclosures and reports to the commission in accordance with stipulated standards and requirements; and
  - (b) deal with the apportionment of liability, and the sharing of costs, between licensed insurers (including the Nominal Defendant); and
  - (ba) provide for the appointment of a person to arbitrate disputes between 2 or more insurers about a claim; and
  - (c) provide for the sharing of information between insurers to the mutual benefit of insurers; and
  - (d) regulate the management of claims under CTP insurance policies; and
  - (e) provide direction and guidance for licensed insurers about initiating, managing, monitoring, and measuring the effectiveness of, the provision of rehabilitation services for injured claimants; and
  - (f) regulate in any other way the conduct of insurance business under the statutory insurance scheme.

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

- (1) The commission may, by gazette notice, withdraw or suspend a licence if—
  - (a) the insurer asks the commission to withdraw or suspend the licence; or
  - (b) the insurer contravenes this Act, a condition of the licence or the industry deed; or
  - (c) there is some other reason justifying withdrawal or suspension of the licence.
- (1A) A request by an insurer under subsection (1)(a) must be given in writing to the commission at least 3 months before the day the licence is to be withdrawn or suspended.
- (2) At least 14 days before the withdrawal or suspension of a licence takes effect, the commission must give the insurer written notice—
  - (a) stating the commission's intention to withdraw or suspend the licence; and
  - (b) stating the date on which the withdrawal or suspension will take effect; and
  - (c) stating the reason for the proposed withdrawal or suspension of the licence.
- (3) The commission must give a copy of the notice to transport administration.

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

- (1) The withdrawal or suspension of a licence does not affect liabilities that had been incurred, or had accrued, before the day of withdrawal or suspension, nor does it affect the insurer's liabilities under CTP insurance policies that came into force before the day of the withdrawal or suspension.
- (2) An insurer whose licence has been withdrawn, or is under suspension, is subject to this Act and the industry deed in the same way and to the same extent as a licensed insurer until all

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the insurer's liabilities for CTP insurance business have been fully satisfied.

- (3) If an insurer whose licence has been withdrawn, or is under suspension, is selected or re-selected to be the insurer under a CTP insurance policy, some other insurer decided under subsection (5) or (6) is to be the insurer under the insurance policy.
- (4) The commission—
  - (a) must consult with the remaining licensed insurers about their capacity to underwrite the CTP insurance policies; and
  - (b) may consult with any insurer the commission considers appropriate for the purpose of the insurer becoming a licensed insurer; and
  - (c) must have regard to the results of any consultation with APRA relevant to the matter.
- (5) Subject to subsection (6), transport administration must randomly allocate the CTP insurance policies to the remaining licensed insurers in proportion to their shares of the market for CTP insurance.
- (6) Subsection (5) does not apply, and transport administration must allocate the CTP insurance policies as decided by the commission, if—
  - (a) the commission decides that the remaining licensed insurers do not have the capacity the commission considers appropriate to underwrite the CTP insurance policies that would be randomly allocated to them under subsection (5); or
  - (b) an insurer mentioned in subsection (4)(b) becomes a licensed insurer.
- (7) Subsections (3), (5) and (6) are subject to section 67A.
- (8) This section is subject to the following qualifications where a licence is withdrawn on the transfer, or because of the transfer, of CTP insurance business under part 3, division 5—

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- (a) if the transferor's entire CTP business is transferred—this section does not apply to the withdrawal of the licence;
  - (b) if part of the transferor's CTP business is transferred—this section applies to the withdrawal subject to section 30(4).
- (9) In this section—
- APRA* means the Australian Prudential Regulation Authority established under the *Australian Prudential Regulation Authority Act 1998* (Cwlth).

## **67A When State may underwrite CTP insurance policies**

- (1) This section applies if—
- (a) an insurer's licence is withdrawn or suspended; and
  - (b) the commission considers CTP insurance policies of the insurer can not be appropriately allocated to another insurer under section 67(5) or (6), including for example, if the commission considers—
    - (i) there is no insurer with appropriate capacity to underwrite the policies; or
    - (ii) the circumstances are urgent.
- (2) The commission may request the Minister to authorise the State to underwrite the CTP insurance policies.
- (3) The commission must provide the Minister with the information and the recommendations on matters decided by the Minister.
- (4) The Minister may authorise the State to underwrite the policies starting from a day stated by the Minister, including from a day before the Minister authorises the underwriting.
- (5) The State becomes the insurer underwriting the policies from the day stated by the Minister.

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- (6) If the State becomes an insurer under subsection (5), a regulation may make provision for the State to, under section 21—
- (a) become an insurer of a motor vehicle, even if, in a particular case, the State is not the insurer of the motor vehicle under subsection (4); or
  - (b) stop being the insurer of a motor vehicle.
- (7) For subsections (5) and (6), this Act, other than the following provisions, applies to the State—
- (a) sections 62 to 64;
  - (b) section 66;
  - (c) section 67(1) and (2);
  - (d) sections 68 and 69;
  - (e) sections 71 to 73;
  - (f) part 5B.
- (8) For subsection (7), a reference, in an applied provision, to an insurer, licensed insurer or CTP insurer includes a reference to the State.
- (9) A regulation may modify an applied provision for the purpose of its application to the State, including, for example—
- (a) to modify the way an insurer's premiums are fixed under sections 13 and 13A if the State is the insurer; or
  - (b) to exempt the State from compliance with section 22.
- (10) A regulation may provide for anything necessary or convenient relating to the transfer to the State of CTP insurance business from the old insurer, including for example the following—
- (a) the transfer of some or all of the rights and liabilities of the old insurer relating to CTP insurance policies transferred to the State;
  - (b) continuing or further obligations of the old insurer relating to the transferred CTP insurance policies;

(c) the payment of amounts into or out of any fund controlled by the State that relates to insurance provided for or by the State.

(11) In this section—

*applied provision* means a provision of this Act applied to the State under subsection (7).

*old insurer* means the insurer whose licence is withdrawn or under suspension.

## **68 Review of the commission's decisions by QCAT**

- (1) An insurer may apply, as provided under the QCAT Act, to QCAT for a review of a decision by the commission to withdraw or suspend the insurer's licence.
- (2) For a proceeding of QCAT for a review under this section, QCAT must be constituted by at least 1 judicial member who is a Supreme Court judge.
- (3) If QCAT changes or reverses the commission's decision, the commission must publish notice of QCAT's decision in the gazette.
- (4) In this section—  
*judicial member* see the QCAT Act, schedule 3.

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

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

- (1) A licensed insurer must prepare and give to the commission a business plan for its compulsory third-party insurance business.
- (2) The licensed insurer's first business plan must be prepared and given to the commission before the licence is granted.

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- (3) The licensed insurer must revise its business plan whenever it departs significantly from the plan and at the regular intervals that the commission directs by written notice.
  - (4) The licensed insurer must, as far as practicable, conduct its compulsory third-party insurance business in accordance with its current business plan.
  - (5) If the insurer departs significantly from the business plan, it must notify the commission of the departure within 2 months after it happens.
  - (6) A business plan—
    - (a) must describe how the insurer’s compulsory third-party business is to be conducted (including marketing, claims handling, the provision of rehabilitation, the keeping of records, systems management and control of costs); and
    - (b) must be prepared in accordance with the written guidelines issued by the commission and notified to licensed insurers.

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

- (1) A licensed insurer must keep the accounting and other records about its business, and its financial position, that may be required by this Act or the industry deed.
- (2) The regulations may prescribe accounting or other standards with which the records must comply.
- (3) A licensed insurer must file returns and other documents with the commission as required by the industry deed or regulation.  
Maximum penalty—150 penalty units.
- (4) The regulations may require that returns or accompanying documents be certified by an auditor or actuary.

## **71 Audit of accounts**

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

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- (a) to inspect or audit, and report to the commission on, the accounting and other records about the business, or the financial position, of a licensed insurer; or
  - (b) to carry out an actuarial investigation into, and report to the commission on, the assets and liabilities, or any class of assets or liabilities, of a licensed insurer.
- (2) The appointed person may inspect the accounting and other records of the licensed insurer.
- (3) The licensed insurer must provide all reasonable help to assist the inspection, audit or actuarial investigation.
- (4) A person must not wilfully delay or obstruct a person exercising powers under this section.
- Maximum penalty—150 penalty units or imprisonment for 1 year.
- (5) A statement made orally or in writing by a person exercising powers under this section is protected by qualified privilege.

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

- (1) A licensed insurer must immediately inform the commission if—
- (a) the insurer or a related body corporate fails to make a payment of principal or interest required under any debenture or security issued by the insurer or the related body corporate; or
  - (b) a liquidator, receiver or receiver and manager of property of the insurer or a related body corporate is appointed; or
  - (c) the insurer or a related body corporate resolves to be wound up; or
  - (d) another event happens of a nature prescribed by regulation.
- (2) The commission may require a licensed insurer—



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- (a) to disclose to the commission, within the time allowed by the commission, specified information about the business or the financial position of the insurer or a related body corporate; or
  - (b) to give to the commission, within the time allowed by the commission, copies of specified documents.
- (3) A requirement under subsection (2) must be made in writing and must state the time within which the requirement must be complied with.
- (4) If a requirement under subsection (2) is not complied with, the insurer commits an offence.
- Maximum penalty—300 penalty units.
- (5) In this section—
- licensed insurer* includes a body corporate formerly licensed under this Act.

## **72A Declarations from licensed insurer**

- (1) The commission may by notice in writing require the chief executive officer or another appropriate officer of a licensed insurer, or both, to give the commission within a reasonable period a declaration for the period to which the notice relates—
  - (a) that the licensed insurer has complied with section 96(1); and
  - (b) that the licensed insurer has not established or treated the cost of any inducement to which section 96(2)(c) or (3)(b) applies as a cost, expense or charge under or against the insurer's CTP insurance policies or CTP business generally; and
  - (c) that the licensed insurer has complied with section 97(5).
- (2) The commission may require the declaration to be given on an annual basis or in relation to a particular period, as stated by the commission in the notice.

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- (3) A person of whom the declaration is required must be a resident of Australia.
- (4) A person of whom the declaration is required—
  - (a) must give the declaration as required, unless the person has a reasonable excuse; and
  - (b) must not make a false declaration.Maximum penalty—300 penalty units.

- (5) In this section—

*appropriate officer of the licensed insurer* means an officer of the licensed insurer who the commission considers is appropriate to provide the declaration.

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

- (1) If the Supreme Court is satisfied, on application by the commission, that a licensed insurer or former licensed insurer—
  - (a) may not be able to meet the insurer's liabilities under CTP insurance policies; or
  - (b) has acted in a way prejudicial to the interests of persons insured under CTP insurance policies;the Supreme Court may make orders that it considers necessary or desirable to protect the statutory insurance scheme and to ensure, as far as practicable, that the insurer properly discharges its obligations under the statutory insurance scheme.
- (2) The Supreme Court may, for example, make orders (including interim orders that are to apply pending the final determination of the application)—
  - (a) regulating the administration and payment of claims under CTP insurance policies; or
  - (b) prohibiting or regulating any transfer or disposal of, or dealing in, assets; or

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- (c) requiring the licensed insurer or former licensed insurer to discharge liabilities under CTP insurance policies out of its assets or the assets of a related body corporate; or
  - (d) appointing a receiver or receiver and manager, with the powers that the court directs, of property or part of the property of the licensed insurer or former licensed insurer or a related body corporate.
- (3) The Supreme Court may not require the commission to give an undertaking about damages as a condition of granting an interim order.
  - (4) On the application of any interested person, the Supreme Court may amend or revoke an order under this section.
  - (5) The powers conferred on the Supreme Court under this section are not to be exercised in relation to a body corporate that is being wound up.

## Part 5AA Referrals of claims and contact to solicit or induce claims

### 74 Giving or receiving consideration for claim referrals

- (1) A person (a *payer*) must not give, agree to give or allow or cause someone else to give consideration to another person (a *payee*) for a claim referral or potential claim referral.

Maximum penalty—300 penalty units.

- (2) A person (also a *payee*) must not receive, agree to receive or allow or cause someone else to receive consideration from another person (also a *payer*) for a claim referral or potential claim referral.

Maximum penalty—300 penalty units.

- (3) This section does not apply if—
  - (a) the payee is a law practice (the *current practice*) that is selling all or part of the law practice's business to another law practice (the *new practice*); and

- (b) the new practice gives, agrees to give or allows or causes someone else to give the current practice an amount for the referral of a claimant to the new practice; and
- (c) the amount is not more than the current legal costs for the claimant; and
- (d) the new practice discloses payment of the amount to the claimant in a costs agreement.

(4) In this section—

***claimant*** includes a potential claimant.

***claim referral***—

- (a) means a referral of a claimant by the payee or someone else—
  - (i) to the payer for the purpose of the payer providing a service for the claimant; or
  - (ii) to the payer or someone else for the purpose of a person other than the payer providing a service for the claimant; but
- (b) does not include the advertisement or promotion of a service or person that results in a claimant using the service or person if the advertisement or promotion is made to the public or a group of persons.

*Examples of advertisement or promotion that is not a claim referral—*

- an advertisement of services provided by a law practice on the website or in the newsletter of a sporting association or charity
- the distribution of promotional stationery or clothing that displays a law practice's logo to members of an industrial organisation

***consideration***, for a claim referral or potential claim referral, see section 74A.

***legal costs***, for a claimant, means the fees and costs, including disbursements, a law practice is entitled to charge and recover from the claimant in relation to the claimant's claim.

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**service**, for a claimant, means a service related to the claimant's claim.

*Examples—*

a legal service, a medical service

#### **74A Meaning of *consideration* for s 74**

- (1) **Consideration**, for a claim referral or potential claim referral, means a fee or other benefit given for the claim referral or potential claim referral but does not include a gift, other than money, or hospitality if the gift or hospitality has a value of \$200 or less.
- (2) To remove any doubt, it is declared that **consideration** does not include—
  - (a) a payment or other benefit, not for a claim referral or potential claim referral, to—
    - (i) a community legal service; or
    - (ii) an industrial organisation; or
    - (iii) a registered entity within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth); or
    - (iv) a school association; or
    - (v) a sporting association; or

*Example—*

legal services provided pro bono by an associate of a law practice to a community legal service

- (b) an amount given by a claimant for a service provided to the claimant as part of making a claim including, for example, an amount for legal costs.
- (3) In this section—

**community legal service** see the *Legal Profession Act 2007*, schedule 2.

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***industrial organisation*** means a federal organisation, or an organisation, as defined under the *Industrial Relations Act 2016*, schedule 5.

***school association*** means—

- (a) an association within the meaning of the *Education (General Provisions) Act 2006*; or
- (b) a parents and friends association formed for a non-State school within the meaning of the *Education (Accreditation of Non-State Schools) Act 2017*.

***sporting association*** means an association formed and operated on a not-for-profit basis for the purpose of conducting a sporting activity.

## **75 Approach or contact for the purpose of making a claim**

- (1) A person (the ***first person***) must not personally approach or contact another person (the ***second person***) and solicit or induce the second person to make a claim.

Maximum penalty—300 penalty units.

- (2) For subsection (1), a person personally approaches or contacts another person if the person specifically contacts that person, whether in person or by mail, telephone, email or another form of electronic communication.
- (3) This section does not apply if—
  - (a) the first person—
    - (i) does not expect or intend to receive, and does not receive, consideration because of the approach or contact; and
    - (ii) does not ask for someone else to receive, or agree to someone else receiving, consideration because of the approach or contact; or
  - (b) the first person—
    - (i) is a law practice or lawyer that is supplying, or has previously supplied, the second person, or a

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- relative of the second person, with legal services;  
and
- (ii) reasonably believes the second person will not object to the approach or contact; or
- (c) the first person—
- (i) is a law practice or lawyer that has been asked by a person on behalf of a community legal service or industrial organisation (a *representative*) to approach or contact the second person; and
  - (ii) has been advised by the representative that the representative reasonably believes the second person will not object to the approach or contact.
- (4) This section applies regardless of whether—
- (a) the second person is entitled to make the claim; or
  - (b) the second person had already decided to make, or had made, the claim.

- (5) In this section—

*community legal service* see the *Legal Profession Act 2007*, schedule 2.

*consideration* means a fee or other benefit but does not include a gift, other than money, or hospitality if the gift or hospitality has a value of \$200 or less.

*industrial organisation* means a federal organisation, or an organisation, as defined under the *Industrial Relations Act 2016*, schedule 5.

*legal services* means work done, or business transacted, in the ordinary course of legal practice.

## 76 Responsibility for acts or omissions of representative

- (1) This section applies to a proceeding for an offence against section 74(1) or (2) or 75.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable precautions and proper diligence, have prevented the act or omission.
- (4) To remove any doubt, it is declared that a representative for an individual includes an employee or agent of a partner of a partnership.
- (5) In this section—

*executive officer*, of a corporation, means a person who is concerned with or takes part in its management, whether or not the person is a director or secretary or the person's position is given the name of executive officer.

*representative* means—

- (a) for an individual—an employee or agent of the individual; or
- (b) for a corporation—an executive officer, employee or agent of the corporation.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.



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**77 Additional consequences for law practice**

- (1) This section applies if an associate of a law practice is convicted of an offence against section 41A, 74(1) or (2) or 75 in relation to a claim or potential claim.
- (2) The law practice is not entitled to recover any fees or costs, including disbursements, that relate to the provision of services for the claim and must repay any amount received that relate to the services to the person from whom it was received.

**78 Injunction to prevent or restrain a contravention of s 74 or 75**

- (1) This section applies if the commissioner reasonably believes a person (an *offending party*) has engaged, is engaging or is proposing to engage in conduct, whether in Queensland or elsewhere, that contravened, is contravening or would contravene section 74(1) or (2) or 75.
- (2) The commissioner may apply to a court of competent jurisdiction (the *court*) for an injunction restraining the offending party from engaging, or continuing to engage, in the conduct.
- (3) The court may grant an interim injunction restraining the offending party from engaging, or continuing to engage, in the conduct pending a decision about the application.
- (4) After considering the application, the court may—
  - (a) if it is satisfied on the balance of probabilities that the offending party has engaged, or is likely to engage or continue to engage, in the conduct—grant the injunction; or
  - (b) refuse to grant the injunction.
- (5) The court may grant the injunction—
  - (a) if it is satisfied the offending party has engaged in the conduct—whether or not it considers the offending party intends to engage again, or continue to engage, in the conduct; or

- (b) if it is satisfied the offending party will likely engage in the conduct if the injunction is not granted—whether or not the offending party has previously engaged in the conduct.
- (6) If the court is satisfied there is a sufficient reason for doing so, it may grant an injunction under subsection (3) or (4) without notice to the offending party.
- (7) In this section—

*court of competent jurisdiction* includes a court of another State or Territory vested with jurisdiction under the cross-vesting laws.

*cross-vesting laws* means the *Jurisdiction of Courts (Cross-vesting) Act 1987* and the corresponding laws of the other States and Territories.

## 79 Maximum amount of legal costs for claims

- (1) This section applies if—
  - (a) a law practice has the conduct of a speculative motor accident claim; and
  - (b) the *Legal Profession Act 2007*, section 347 does not apply to the practice.
- (2) The maximum amount of legal costs the law practice may charge and recover from a client for work done in relation to the claim can not be more than the amount worked out using the formula stated in the *Legal Profession Act 2007*, section 347(1).
- (3) However, approval to charge and recover a greater amount may be applied for and approved in the way described in the *Legal Profession Act 2007*, section 347(2) to (4).
- (4) This section applies to a barrister only if the barrister has not been retained by another law practice.
- (5) This section applies despite anything to the contrary in the costs agreement that relates to the claim.

(6) In this section—

*legal costs* see the *Legal Profession Act 2007*, section 346.

*speculative motor accident claim* means a claim or potential claim if the right of a law practice to charge and recover legal costs from the client who made the claim for work done is dependent on the client's success in pursuing the claim.

## 80 Extraterritorial application of part

- (1) This part, other than section 78, applies both within and outside Queensland.
- (2) This part applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

# Part 5A Enforcement

## Division 1AA Interpretation

### 81 Definitions for part

In this part—

*affected person*, in relation to a decision, means—

- (a) if the decision is an original decision—a person who must be given an information notice for the decision; or
- (b) if the decision is an internal review decision—the person who applied for the internal review.

*authorised person* means a person who holds office under division 1 as an authorised person.

*decision notice* see section 87SD(1).

*identity card* means an identity card given under section 87D.

*information notice*, for an original decision, means a written notice stating the following information—

- (a) the decision;
- (b) the reasons for the decision;

*Note—*

See the *Acts Interpretation Act 1954*, section 27B for matters that must be included with the reasons.

- (c) that the person to whom the notice is given may ask for a review of the decision under this Act;
- (d) how, and the period within which, the review may be started;
- (e) how the person may apply for a stay of the operation of the decision.

***internal review***, of an original decision, see section 87SA(1).

***internal review decision*** means a decision made, or taken to have been made, under section 87SC on an application for internal review of an original decision.

***notice*** means a written notice.

***occupier***, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

***of***, a place, includes at or on the place.

***offence warning***, for a requirement by an authorised person, means a warning that, without a reasonable excuse, it is an offence for the person of whom the requirement is made, not to comply with it.

***original decision*** means a decision for which an information notice must be given under this part.

***owner***, of a thing that has been seized under this part, includes a person who would be entitled to possession of the thing had it not been seized.

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***person in control***, of a thing, includes any person who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

***place*** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated.

***premises*** includes the following—

- (a) a building or other structure;
- (b) a part of a building or other structure;
- (c) a caravan or vehicle;
- (d) a cave or tent;
- (e) premises held under more than 1 title or by more than 1 owner.

***public place*** means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under paragraph (a)—*

a beach, a park, a road

- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

*Examples of a place that may be a public place under paragraph (b)—*

a saleyard, a showground

***vehicle***—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

## **82 References to exercise of powers**

If—

- (a) a provision of this part refers to the exercise of a power by an authorised person; and
  - (b) there is no reference to a specific power;
- the reference is to the exercise of all or any authorised persons' powers under this part or a warrant, to the extent the powers are relevant.

## **83 Reference to document includes reference to reproductions from electronic document**

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

## **Division 1 Authorised persons**

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

- (1) The commission may appoint a person as an authorised person if the commission considers the person has the necessary expertise or experience to be an authorised person.
- (2) Even though a person who is an officer or employee of transport administration or who is subject to transport administration's administrative control or supervision may have, in that capacity, some of the functions of an authorised

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person under this part, the officer or employee is not to be regarded as an authorised person unless appointed as an authorised person by the commission.

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

- (1) An authorised person has the following functions—
  - (a) to monitor compliance with this Act and the National Injury Act;
  - (b) to investigate suspected offences against this Act and the National Injury Act;
  - (c) to investigate, at the commission’s direction, claims against an insurer, and liabilities that may be owed to an insurer, under this Act.
- (2) An authorised person has the powers given to the person under this Act or another Act.
- (3) An authorised person is subject to the commission’s directions in exercising the authorised person’s powers.
- (4) The powers of an authorised person may be limited—
  - (a) under a regulation; or
  - (b) under a condition of appointment; or
  - (c) by written notice given by the commission to the authorised person.

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

- (1) An authorised person holds office on the conditions stated in the instrument of appointment.
- (2) An authorised person—
  - (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
  - (b) may resign by signed notice given to the commission; and

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- (c) if the conditions of office provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the *main office*).
- (3) However, an authorised person may not resign from the office of authorised person (the *secondary office*) if a term of the authorised person’s employment to the main office requires the authorised person to hold the secondary office.

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

- (1) The commission must give an identity card to each authorised person.
- (2) The identity card must—
  - (a) contain a recent photograph of the authorised person; and
  - (b) be signed by the authorised person; and
  - (c) identify the person as an authorised person for the commission; and
  - (d) include an expiry date; and
  - (e) be signed by the commissioner.
- (3) A person who ceases to be an authorised person must return the person’s identity card to the commission within 7 days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **87E Production or display of identity card**

- (1) In exercising a power in relation to a person in the person’s presence, an authorised person must—
  - (a) produce the authorised person’s identity card for the other person’s inspection before exercising the power; or



- (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised person does not exercise a power in relation to a person only because the authorised person has entered a place as mentioned in section 87G(1)(b) or (d).

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

- (1) A designated person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a designated person, the liability attaches instead to the commission.
- (3) In this section—  
*designated person* means an authorised person or a person acting under the authority or direction of an authorised person.

## **Division 2 Entry of places by authorised persons**

### **Subdivision 1 Power to enter**

#### **87G General power to enter places**

- (1) An authorised person may enter a place if—
  - (a) an occupier at the place consents under subdivision 2 to the entry and section 87J has been complied with for the occupier; or

- (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 87Q has been complied with for the occupier; or
  - (d) it is a licensed insurer's premises and is—
    - (i) open for carrying on business; or
    - (ii) otherwise open for entry.
- (2) For subsection (1)(d), a *licensed insurer's premises* does not include a part of the premises where a person resides.
- (3) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (4) The consent may provide consent for re-entry and is subject to the conditions of consent.
- (5) If the power to enter is under a warrant, the power is subject to the terms of the warrant.
- (6) If the power to re-enter is under a warrant, the re-entry is subject to the terms of the warrant.

## **Subdivision 2      Entry by consent**

### **87H      Application of subdivision**

This subdivision applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 87G(1)(a).

### **87I Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an authorised person may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

### **87J Matters authorised person must tell occupier**

Before asking for the consent, the authorised person must—

- (a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and
- (b) tell the occupier that—
  - (i) the occupier is not required to consent; and
  - (ii) the consent may be given subject to conditions and may be withdrawn at any time.

### **87K Consent acknowledgement**

- (1) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised; and
  - (c) that the occupier has been told—
    - (i) that the occupier is not required to consent; and

- (ii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (d) that the occupier gives the authorised person or another authorised person consent to enter the place and exercise the powers; and
  - (e) the day and time the consent was given; and
  - (f) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- (4) However, if it is impractical for the authorised person to give the occupier a copy of the acknowledgment immediately, the authorised person must give the copy as soon as practicable.
- (5) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **Subdivision 3      Entry under warrant**

#### **87L      Application for warrant**

- (1) An authorised person may apply to a magistrate for a warrant for a place.
- (2) The authorised person must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) 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 written application to be given by statutory declaration.

**87M Issue of warrant**

- (1) The magistrate may issue a warrant for the place only under subsection (2).
- (2) The magistrate may issue the warrant for the place if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act or the National Injury Act.
- (3) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised person or any authorised person may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the authorised person's powers; and
  - (c) particulars of the offence that the magistrate considers appropriate; and
  - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and
  - (g) the magistrate's name; and
  - (h) the day and time of the warrant's issue; and
  - (i) the day, within 14 days after the warrant's issue, the warrant ends.

### **87N Electronic application**

- (1) An application under section 87L may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised person's remote location.
- (2) The application—
  - (a) may not be made before the authorised person prepares the written application under section 87L(2); but
  - (b) may be made before the written application is sworn.

### **87O Additional procedure if electronic application**

- (1) For an application made under section 87N, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 87N; and
  - (b) the way the application was made under section 87N was appropriate.
- (2) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised person the information mentioned in section 87M(3); and
    - (ii) the authorised person must complete a form of warrant, including by writing on it the information

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mentioned in section 87M(3) provided by the magistrate.

- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised person must, at the first reasonable opportunity, send to the magistrate—
  - (a) the written application complying with section 87L(2) and (3); and
  - (b) if the authorised person completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
  - (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—
  - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 87L.
- (8) In this section—

***relevant magistrates court***, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

### **87P Defect in relation to a warrant**

- (1) A warrant is not invalidated by a defect in—
  - (a) the warrant; or
  - (b) compliance with this subdivision;unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—

*warrant* includes a duplicate warrant mentioned in section 87O(3).

### **87Q Entry procedure**

- (1) This section applies if an authorised person is intending to enter a place under a warrant issued under this subdivision.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised person's identity card or another document evidencing the authorised person's appointment;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the authorised person is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—

*warrant* includes a duplicate warrant mentioned in section 87O(3).



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## **Division 3                    Other authorised persons' powers and related matters**

### **Subdivision 1            General powers of authorised persons after entering places**

#### **87R    Application of subdivision**

- (1) The powers under this subdivision may be exercised if an authorised person enters a place under section 87G(1)(a), (c) or (d).
- (2) However, if the authorised person enters under section 87G(1)(a) or (c), the powers under this subdivision are subject to any conditions of the consent or terms of the warrant.

#### **87RA    General powers**

- (1) The authorised person may do any of the following (each a *general power*)—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place;
  - (d) place an identifying mark in or on anything at the place;
  - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

- (g) take to, into or onto the place and use any person, equipment and materials the authorised person reasonably requires for exercising the authorised person's powers under this part;
  - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised person may take a necessary step to allow the exercise of a general power.
  - (3) If the authorised person takes a document from the place to copy it, the authorised person must copy the document and return it to the place as soon as practicable.
  - (4) If the authorised person takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised person must produce the document and return the article or device to the place as soon as practicable.
  - (5) In this section—
    - examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.
    - film* includes photograph, videotape and record an image in another way.
    - inspect*, a thing, includes open the thing and examine its contents.

### **87RB Power to require reasonable help**

- (1) The authorised person may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the authorised person reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the authorised person must give the person an offence warning for the requirement.
- (3) In this section—

*general power* see section 87RA(1).

### **87RC Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) In this section—

*help requirement* see section 87RB(1).

## **Subdivision 2 Seizure by authorised persons**

### **87RD Seizing evidence at a place that may be entered without consent or warrant**

An authorised person who enters a place the authorised person may enter under this part without the consent of an occupier of the place and without a warrant may seize a thing at the place if the authorised person reasonably believes the thing is evidence of an offence against this Act or the National Injury Act.

### **87RE Seizing evidence at a place that may be entered only with consent or warrant**

- (1) This section applies if—
  - (a) an authorised person is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised person enters the place after obtaining the consent or under a warrant.

- (2) If the authorised person enters the place with the occupier's consent, the authorised person may seize a thing at the place only if—
  - (a) the authorised person reasonably believes the thing is evidence of an offence against this Act or the National Injury Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the authorised person enters the place under a warrant, the authorised person may seize the evidence for which the warrant was issued.
- (4) The authorised person may also seize anything else at the place if the authorised person reasonably believes—
  - (a) the thing is evidence of an offence against this Act or the National Injury Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.
- (5) The authorised person may also seize a thing at the place if the authorised person reasonably believes it has just been used in committing an offence against this Act or the National Injury Act.

### **87RF Seizure of property subject to security**

- (1) An authorised person may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised person or a person acting under the direction or authority of the authorised person.

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### **87RG Power to secure seized thing**

- (1) Having seized a thing under this subdivision, an authorised person may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the authorised person may, for example—
  - (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - (b) for equipment—make it inoperable; or  
*Example—*

make it inoperable by dismantling it or removing a component without which the equipment can not be used
  - (c) require a person the authorised person reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an authorised person could do under subsection (1)(a).

### **87RH Offence to contravene seizure requirement**

A person must comply with a requirement made of the person under section 87RG(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

### **87RI Offence to interfere**

- (1) If access to a seized thing is restricted under section 87RG, a person must not tamper with the thing or with anything used to restrict access to the thing without—
  - (a) an authorised person's approval; or

(b) a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If access to a place is restricted under section 87RG, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

(a) an authorised person's approval; or

(b) a reasonable excuse.

Maximum penalty—50 penalty units.

### **87RJ Receipt and information notice for seized thing**

(1) This section applies if an authorised person seizes anything under this subdivision unless—

(a) the authorised person reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or

(b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised person to comply with this section.

(2) The authorised person must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—

(a) a receipt for the thing that generally describes the thing and its condition; and

(b) an information notice for the decision to seize it.

(3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.

(4) The receipt and information notice may—

(a) be given in the same document; and

- (b) relate to more than 1 seized thing.
- (5) The authorised person may delay giving the receipt and information notice if the authorised person reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised person under this part.
- (6) However, the delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

### **87RK Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the authorised person who seized the thing must allow an owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

### **87RL Return of seized thing**

- (1) This section applies if a seized thing is not forfeited or transferred under subdivision 3 or 4.
- (2) As soon as the commission stops being satisfied there are reasonable grounds for retaining the thing, the commission must return it to its owner.
- (3) If the thing is not returned to its owner within 3 months after it was seized, the owner may apply to the commission for its return.
- (4) Within 30 days after receiving the application, the commission must—

- (a) if the commission is satisfied there are reasonable grounds for retaining the thing and decides to retain it—give the owner an information notice for the decision; or
  - (b) otherwise—return the thing to the owner.
- (5) For this section, there are reasonable grounds for retaining a seized thing if—
- (a) the thing is being, or is likely to be, examined; or
  - (b) the thing is needed, or may be needed, for the purposes of—
    - (i) a proceeding for an offence against this Act or the National Injury Act that is likely to be started or that has been started but not completed; or
    - (ii) an appeal from a decision in a proceeding for an offence against this Act or the National Injury Act; or
  - (c) it is not lawful for the owner to possess the thing.
- (6) Subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing.
- (7) Nothing in this section affects a lien or other security over the seized thing.
- (8) In this section—
- examine* includes analyse, test, measure, weigh, grade, gauge and identify.

### **Subdivision 3      Forfeiture**

#### **87RM Forfeiture by commission decision**

- (1) The commission may decide a seized thing is forfeited to the State if an authorised person—
- (a) after making reasonable inquiries, can not find an owner; or



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- (b) after making reasonable efforts, can not return it to an owner; or
  - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence against section 74(1) or (2), 75 or 87T for which it was seized.
- (2) However, the authorised person is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.

- (3) Regard must be had to the thing's condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

### **87RN Information notice about forfeiture decision**

- (1) If the commission decides under section 87RM(1) to forfeit a thing, the commission must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) If the decision was made under section 87RM(1)(a) or (b), the information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision.
- (4) However, subsections (1) to (3) do not apply if—

[s 87RO]

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- (a) the decision was made under section 87RM(1)(a) or (b); and
- (b) the place where the thing was seized is—
  - (i) a public place; or
  - (ii) a place where the notice is unlikely to be read by the former owner.

## **Subdivision 4      Dealing with property forfeited or transferred to State**

### **87RO When thing becomes property of the State**

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 87RM(1); or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

### **87RP How property may be dealt with**

- (1) This section applies if, under section 87RO, a thing becomes the property of the State.
- (2) The commission may deal with the thing as the commission considers appropriate, including, for example, by destroying it or giving it away.
- (3) The commission must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- (4) If the commission sells the thing, the commission must, after deducting the costs of the sale, make reasonable efforts to return the proceeds of the sale to the former owner of the thing.
- (5) In this section—  
*former owner*, of a thing, see section 87RN(1).

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## Subdivision 5      Other information-obtaining powers of authorised persons

### 87RQ Power to require name and address

- (1) This section applies if an authorised person—
  - (a) finds a person committing an offence against this Act or the National Injury Act; or
  - (b) finds a person in circumstances that lead the authorised person to reasonably suspect the person has just committed an offence against this Act or the National Injury Act; or
  - (c) has information that leads the authorised person to reasonably suspect a person has just committed an offence against this Act or the National Injury Act.
- (2) The authorised person may require the person to state the person's name and address.
- (3) The authorised person may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
  - (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the authorised person must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.
- (6) In this section—

*address*, of a person, includes the person's residential and business address and, for a person temporarily in Queensland, includes the place where the person is living in Queensland.

### **87RR Offence to contravene personal details requirement**

- (1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person may not be convicted of an offence against subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

- (3) In this section—

*personal details requirement* see section 87RQ(5).

### **87RS Power to require information**

- (1) This section applies if an authorised person reasonably believes a person has information relevant to any of the following matters—

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

- (2) The authorised person may require the person to—

- (a) give the authorised person the information by a stated reasonable time; or
- (b) produce a document to the authorised person for inspection at a stated reasonable time and place and allow the authorised person to make a copy of the document.

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

- (4) When making a requirement under subsection (2), the authorised person must give the person an offence warning for the requirement.
- (5) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.

### **87RT Offence to contravene information requirement**

- (1) A person of whom a requirement is made under section 87RS(2) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) It is a reasonable excuse for an individual not to give the information or produce the document if—
  - (a) the person would be entitled to refuse to give the information or produce the document in a court proceeding on the ground that giving the information or producing the document might tend to incriminate the individual or expose the individual to a penalty; or
  - (b) for a requirement to produce a document—the cost of producing the document would be unreasonable, having regard to its evidentiary value and any other relevant circumstances.
- (3) The person does not commit an offence against this section if the information or document sought by the authorised person is not relevant to a matter mentioned in section 87RS(1).

## **Division 4                      Miscellaneous provisions relating to authorised persons**

### **Subdivision 1              Damage**

#### **87RU    Duty to avoid inconvenience and minimise damage**

In exercising a power, an authorised person must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 87RW.

#### **87RV    Notice of damage**

- (1) This section applies if—
  - (a) an authorised person damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an authorised person damages something.
- (2) However, this section does not apply to damage the authorised person reasonably considers is trivial or if the authorised person reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The authorised person must give notice of the damage to a person who appears to the authorised person to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the authorised person must—
  - (a) leave the notice at the place where the damage happened; and

- (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The authorised person may delay complying with subsection (3) or (4) if the authorised person reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the authorised person's functions.
- (6) The delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised person or the assistant, the authorised person may state the belief in the notice.
- (8) The notice must state—
  - (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 87RW.

## **Subdivision 2      Compensation and costs of investigation**

### **87RW Compensation**

- (1) A person may claim compensation from the commission if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised person including a loss arising from compliance with a requirement made of the person under division 3.
- (2) However, subsection (1) does not include loss arising from a lawful seizure or a lawful forfeiture.
- (3) The compensation may be claimed and ordered in a proceeding—

[s 87RX]

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- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act or the National Injury Act the investigation of which gave rise to the claim for compensation.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
  - (5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
  - (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
  - (7) Section 87RU does not provide for a statutory right of compensation other than as provided by this section.
  - (8) In this section—  
*loss* includes costs and damage.

### **87RX Costs of investigation**

- (1) This section applies if a person is convicted by a court of an offence against this Act or the National Injury Act.
- (2) The court may order the person to pay the commission's reasonable costs of an investigation about the offence, including reasonable costs of preparing for the prosecution.
- (3) This section does not limit the order for costs the court may make on the conviction.



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### **Subdivision 3      Other offences relating to authorised persons**

#### **87RY    Obstructing authorised person**

- (1) A person must not obstruct an authorised person exercising a power, or someone helping an authorised person exercising a power, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If a person has obstructed an authorised person, or someone helping an authorised person, and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—
- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
  - (b) the authorised person considers the person’s conduct an obstruction.

- (3) In this section—

*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

#### **87RZ    Impersonating authorised person**

A person must not impersonate an authorised person.

Maximum penalty—50 penalty units.

## **Division 4A            Reviews and appeals about particular decisions**

### **Subdivision 1        Internal review**

#### **87S     Review process must start with internal review**

An affected person for an original decision may appeal to a Magistrates Court only if a decision on an application for internal review of the decision has been made, or taken to have been made, under this subdivision.

#### **87SA   Who may apply for internal review**

- (1) An affected person for an original decision may apply to the commission for a review of the decision under this subdivision (an *internal review*).
- (2) If the affected person has not been given an information notice for the original decision, the affected person may ask the commission for an information notice for the decision.
- (3) A failure by the commission to give the affected person an information notice for the original decision does not limit or otherwise affect the person's right to apply for an internal review of the decision.

#### **87SB   Requirements for application**

- (1) An application for internal review of an original decision must—
  - (a) be written; and
  - (b) for a person who has been given an information notice for the decision—include enough information to enable the commission to decide the application; and
  - (c) be made to the commission within—

- (i) for a person who has been given an information notice for the decision—28 days after the day the person is given the notice; or
  - (ii) for a person who has not been given an information notice for the decision—28 days after the day the person becomes aware of the decision.
- (2) The commission may, at any time, extend the period within which the application may be made.
- (3) The application does not affect the operation of the original decision or prevent the decision being implemented.

*Note—*

Subdivision 2 provides for a stay of the original decision.

### **87SC Internal review**

- (1) The commission must, within 20 days after receiving an application for internal review of an original decision—
  - (a) review the original decision; and
  - (b) decide to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision; and
  - (c) give the affected person for the original decision a decision notice for the commission's decision under paragraph (b).
- (2) The commission and the affected person may, before the period stated in subsection (1) ends, agree to a longer period for the commission to comply with the subsection.
- (3) The application may be dealt with only by a person who—
  - (a) did not make the original decision; and
  - (b) holds a more senior office than the person who made the original decision.

[s 87SD]

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- (4) Subsection (3) does not apply to an original decision made by the commission personally.
- (5) If the commission does not give the affected person a decision notice within the period required under subsection (1) or a longer period agreed under subsection (2), the commission is taken to confirm the original decision.

### **87SD Decision notice**

- (1) A notice given for an internal review decision (a *decision notice*) must state the following information—

- (a) the decision;
- (b) the reasons for the decision;

*Note—*

See the *Acts Interpretation Act 1954*, section 27B for matters that must be included with the reasons.

- (c) that the person to whom the notice is given may appeal the decision under this Act;
  - (d) how, and the period within which, the appeal may be started;
  - (e) how the person may apply for a stay of the operation of the decision.
- (2) If the commission does not give an affected person a decision notice for an internal review decision within the period required under section 87SC, the affected person may ask the commission for the decision notice.
  - (3) A failure by the commission to give an affected person a decision notice for an internal review decision does not limit or otherwise affect the person's right to appeal to the Magistrates Court the internal review decision.

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## **Subdivision 2      Staying operation of original decision**

### **87SE Court may stay operation of original decision**

- (1) An affected person for an original decision may apply to the Magistrates Court for a stay of the operation of the decision.
- (2) The application may be made at any time within the period within which an application for an internal review of the original decision may be made under subdivision 1.
- (3) The court may make an order staying the operation of the original decision only if it considers the order is desirable after having regard to the following—
  - (a) the interests of any person whose interests may be affected by the making of the order or the order not being made;
  - (b) any submission made to the court by the entity that made the original decision;
  - (c) the public interest.
- (4) A stay by the court under this section—
  - (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be amended or revoked by the court.
- (5) The period of a stay by the court under this section must not extend past—
  - (a) the end of the period within which an application for an internal review of the original decision may be made under subdivision 1; or
  - (b) if an application for an internal review of the original decision is made under subdivision 1 within the period allowed under that subdivision—the end of the period within which an appeal against the internal review decision may be made under section 87SF.

## **Subdivision 3 Appeals**

### **87SF Appealing internal review decision**

- (1) This section applies to a person who—
  - (a) has applied for an internal review of an original decision; and
  - (b) is dissatisfied with the internal review decision.
- (2) The person may appeal to a Magistrates Court (the *court*) against the internal review decision by filing a notice of appeal with the registrar of the court.
- (3) The notice of appeal must state fully the grounds of the appeal.
- (4) The person must file the notice of appeal within 28 days after a decision notice for the internal review decision is given to the person.
- (5) However, the court may, on application and at any time, extend the time for filing the notice of appeal.
- (6) The person must serve a copy of the notice of appeal, and any application to extend the time for filing the notice of appeal, on the commission.
- (7) The appeal does not affect the operation of the internal review decision or prevent the decision being implemented.

### **87SG Staying operation of internal review decision**

- (1) A person mentioned in section 87SF(1) may apply to the court for a stay of the operation of the internal review decision.
- (2) The court may, by order, stay the operation of the internal review decision to secure the effectiveness of the appeal.
- (3) The court may stay the operation of the internal review decision on conditions the court considers appropriate.
- (4) The stay operates for the period decided by the court.

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- (5) However, the period of the stay must not extend past the time when the court decides the appeal.

### **87SH Powers of court on appeal**

- (1) When deciding an appeal against an internal review decision, the court—
- (a) has the same powers as the commission in making the internal review decision; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
- (a) confirm the internal review decision; or
  - (b) substitute another decision for the internal review decision; or
  - (c) set aside the internal review decision and return the matter to the commission with directions the court considers appropriate.

### **87SI Effect of court's decision on appeal**

- (1) If the court substitutes another decision for the internal review decision—
- (a) the substituted decision is taken to be a decision of the decision-maker; and
  - (b) the commission may give effect to the decision as if—
    - (i) the decision were the original decision of the decision-maker; and
    - (ii) no application for review or appeal of the original decision had been made.
- (2) If the court sets aside the internal review decision and returns the matter to the original decision-maker with directions, any

decision made by the decision-maker in accordance with the directions may not be reviewed or appealed against under this part.

(3) In this section—

*decision-maker*, of an original decision, means—

- (a) for an original decision mentioned in section 87RJ—an authorised person; or
- (b) otherwise—the commission.

## **Division 5                      Fraud and false and misleading statements**

### **87T      Offences involving fraud**

(1) A person must not in any way—

- (a) defraud or attempt to defraud the commission, or the Nominal Defendant or another insurer; or
- (b) deliberately mislead or attempt deliberately to mislead the commission, the Nominal Defendant or another insurer; or
- (c) connive at conduct by another that contravenes paragraph (a) or (b).

Maximum penalty—400 penalty units or 18 months imprisonment.

(2) If conduct that constitutes an offence defined in subsection (1) is recurrent so that, but for this subsection, each instance of the conduct would constitute a separate offence, 2 or more instances of the conduct are to be taken to constitute but 1 offence committed over a period specified in the complaint laid in relation to the conduct, and may be charged and be dealt with on 1 complaint.



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**87U False or misleading information or documents about claim**

- (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 if the person, when giving a document—
  - (a) tells the commission, or the Nominal Defendant or other insurer, to the best of the person’s ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives 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’.

### **87UA Giving authorised person false or misleading information**

- (1) A person must not, in relation to the administration of this Act or the National Injury Act, give an authorised person information the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units.

- (2) Subsection (1) applies to information given in relation to the administration of this Act or the National Injury Act whether or not the information was given in response to a specific power under this Act or the National Injury Act.
- (3) Subsection (1) does not apply to a person if the person, when giving information in a document—
- (a) tells the authorised person, to the best of the person’s ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

## **Division 6 Information from commissioner of police service**

### **Subdivision 1 Risk to authorised person’s safety**

#### **87V Commission’s power to obtain criminal history report for authorised person’s safety**

- (1) The commission may ask the commissioner of the police service for a written report about the criminal history of a person if an authorised person reasonably suspects the person—
- (a) may be present at a place when the authorised person enters the place under part 5A; and
  - (b) may create an unacceptable level of risk to the authorised person’s safety.

- (2) The commissioner of the police service must give the report to the commission.
- (3) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.
- (4) The commission must examine the report and identify, to the extent it is reasonably practicable to do so, offences involving the use of a weapon or violence against a person.
- (5) The commission may give the authorised person information in the report about the offences identified under subsection (4).
- (6) The commission or an authorised person to whom the report or written information in the report is given must destroy the report or written information as soon as practicable after the authorised person considers the risk to the authorised person's safety.

### **87VA Confidentiality of criminal history under s 87V**

- (1) A person must not use or disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 87V unless the use or disclosure is allowed under subsection (2).

Maximum penalty—100 penalty units.

- (2) The person may use the information, or disclose the information to another person, if the use or disclosure—
  - (a) is for the purpose of the other person performing a function under this Act; or
  - (b) is with the consent of the person to whom the information relates; or
  - (c) is otherwise permitted or required by law.

## **Subdivision 2      Offence against this Act or National Injury Act**

### **87VB    Commission's power to obtain criminal history report about offence**

- (1) The commission may ask the commissioner of the police service for information in the possession of the Queensland Police Service that is mentioned in subsection (2) about a person the commission reasonably suspects to have committed an offence against this Act or the National Injury Act.
- (2) The information that may be given is—
  - (a) the person's criminal history or part of the person's criminal history; and
  - (b) a brief of evidence compiled by the Queensland Police Service on anything mentioned in the person's criminal history; and
  - (c) a document about a complaint made by or against the person.
- (3) For this section, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply.

### **87VC    Confidentiality of information under s 87VB**

- (1) A person must not use or disclose, directly or indirectly, to anyone else information given under section 87VB unless the use or disclosure is allowed under subsection (2).

Maximum penalty—100 penalty units.
- (2) The person may use the information, or disclose the information to another person, if the use or disclosure—
  - (a) is for the purpose of an investigation or prosecution under this Act or the National Injury Act; or
  - (b) is with the consent of the person to whom the information relates; or

- (c) is otherwise permitted or required by law.

## Division 7 Proceedings

### 87W Proceedings

- (1) A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886* before a magistrate on the complaint of—
  - (a) the commissioner; or
  - (b) the Attorney-General; or
  - (c) a person authorised by the commissioner or the Attorney-General to take the proceeding.
- (2) The proceeding must start—
  - (a) within 2 years after the commission of the offence; or
  - (b) within 6 months after the commission of the offence comes to the knowledge of the complainant;whichever is the later.
- (3) A statement in a complaint that—
  - (a) the complainant is authorised by the commissioner or the Attorney-General to take the proceeding; or
  - (b) the commission of the alleged offence came to the knowledge of the complainant on a particular date;is evidence of the fact stated.
- (4) Proof of an authorisation by the commissioner or the Attorney-General under subsection (1)(c) is not required in a proceeding unless the defendant gives the entity responsible for prosecuting the proceeding a notice of intention to challenge the authorisation at least 10 business days before the hearing date.
- (5) The notice must be in the form approved by the commission or transport administration.

### **87WA Appointments and authority**

The following must be presumed in a proceeding under this Act unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the appointment of an authorised person;
- (b) the authority of an authorised person to do anything under this Act.

### **87WB Signatures**

A signature purporting to be the signature of an authorised person is evidence of the signature it purports to be.

## **Division 8 Evidence**

### **87X Evidentiary certificates given by the commission and transport administration**

- (1) The commission may issue a certificate certifying any 1 or more of the following matters—
  - (a) that the commission made a specified decision under this Act on a specified date;
  - (b) that the commission carried out a specified administrative act under this Act on a specified date;
  - (c) that the commission gave a specified notice to a specified person in a specified way on a specified date;
  - (d) that an address at which a specified notice was left, or to which it was sent, was the last address known to the commission of the person to whom the notice was to be given.
- (2) Transport administration may issue a certificate certifying any 1 or more of the following matters—
  - (a) that a specified vehicle was or was not registered at a specified time, or over a specified period;

- (b) that a specified vehicle was or was not insured under the statutory insurance scheme at a specified time, or over a specified period;
  - (c) that a specified amount is, or was at a specified time, payable to transport administration as an insurance premium for CTP insurance for a specified vehicle;
  - (d) that there was a specified deficiency in the amount received by transport administration on a specified date by way of an insurance premium for CTP insurance for a specified vehicle.
- (3) A certificate under this section is admissible in civil or criminal proceedings as evidence of anything stated in the certificate.
- (4) A document is admissible in legal proceedings and is to be taken, in the absence of contrary evidence, to be a certificate under this section if the document—
- (a) appears to be a certificate under this section; and
  - (b) purports to be signed by a person authorised by the commission or transport administration (as the case requires) to issue the certificate.
- (5) Subsections (6) and (7) apply if there is an authorisation by the commission or transport administration under subsection (4)(b) of a power to give a certificate under subsection (1) or (2).
- (6) Proof of the authorisation is not required in a proceeding unless the defendant gives the entity responsible for prosecuting the proceeding a notice of intention to challenge the authorisation at least 10 business days before the hearing date.
- (7) The notice must be in the form approved by the commission or transport administration.

## Division 9                      Miscellaneous

### 87Y    Extraterritorial application of part

- (1) This part applies both within and outside Queensland to the extent necessary for any investigation of a contravention of section 74(1) or (2) or 75.
- (2) For subsection (1), this part applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

### 87Z    Confidentiality of information

- (1) An authorised person must not, whether directly or indirectly, disclose confidential information.

Maximum penalty—100 penalty units.

- (2) However, subsection (1) does not apply if—
  - (a) the confidential information is disclosed—
    - (i) in the performance of functions under this part; or
    - (ii) with the written consent of the person to whom the information relates; or
    - (iii) to the person to whom the information relates; or
    - (iv) in a form that could not identify any person; or
  - (b) the disclosure of the confidential information is authorised under an Act or another law.

- (3) In this section—

*confidential information* means information that has become known to an authorised person in the course of performing the authorised person's functions for this part.



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## Part 5B Special investigations

### 87ZA Definitions for part

In this part—

*associated person*, for an investigated person, means—

- (a) for an investigated person who is an insurer—an officer of the insurer; or
- (b) for an investigated person who is a related body corporate for an insurer—an officer of the body corporate; or
- (c) for an investigated person who is a law practice—
  - (i) an associate of the law practice; or
  - (ii) a barrister briefed by the law practice in relation to a claim the commission reasonably suspects is connected to a contravention of section 74(1) or (2) or 75; or
  - (iii) a corporation associated with the law practice and the corporation's executive officers; or
- (d) for an investigated person who is a lawyer—a barrister briefed by the lawyer in relation to a claim the commission reasonably suspects is connected to a contravention of section 74(1) or (2) or 75.

*investigated person* means any of the following—

- (a) an insurer mentioned in section 87ZC(1);
- (b) an entity mentioned in section 87ZC(2);
- (c) a body corporate mentioned in section 87ZE.

*investigator* means an investigator appointed under section 87ZC.

### **87ZB Reference to document includes reference to reproductions from electronic document**

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

### **87ZC Appointment of investigator**

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

*Note—*

See also section 87ZE.

- (2) Also, the commission may appoint an investigator to investigate the relevant affairs of either of the following entities—
  - (a) a law practice or lawyer that is acting or has acted for a claimant;
  - (b) an entity prescribed by regulation for this section.
- (3) The commission may appoint an investigator under subsection (2) if the commission reasonably suspects that section 74(1) or (2) or 75 may have been contravened by the investigated person or an associated person for the investigated person.
- (4) The commission may, by written instrument, appoint any of the following persons as an investigator—
  - (a) an Australian legal practitioner;
  - (b) a qualified accountant;
  - (c) another appropriately qualified person.

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- (5) The instrument of appointment must state the terms of appointment and the matters into which the investigation is to be made.
  - (6) The instrument of appointment may state a period within which the investigation must be completed.
  - (7) The commission may, by written notice given to the investigator—
    - (a) amend the instrument of appointment; or
    - (b) end the appointment.

- (8) In this section—

*Australian legal practitioner* see the *Legal Profession Act 2007*, section 6.

*qualified accountant* means—

- (a) a member of CPA Australia Ltd ACN 008 392 452 who is entitled to use the letters ‘CPA’ or ‘FCPA’; or
- (b) a member of Chartered Accountants Australia and New Zealand ARBN 084 642 571 who is entitled to use the letters ‘CA’ or ‘FCA’; or
- (c) a member of the Institute of Public Accountants Ltd ACN 004 130 643 who is entitled to use the words ‘MIPA’ or ‘FIPA’.

*relevant affairs*, of an investigated person, means matters relating to how the investigated person received or was referred instructions for a claim, and how the investigated person gave or referred instructions for a claim, and includes a transaction involving the investigated person or an associated person for the investigated person relevant to the receipt or referral of instructions.

## **87ZD Delegation of powers by investigator**

- (1) An investigator may delegate a power under this part other than the power to administer an oath or affirmation or the power to examine on oath or affirmation.

[s 87ZE]

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- (2) A delegate must produce the instrument of delegation for inspection on request by an investigated person or an associated person for an investigated person.

### **87ZE Investigation of related body corporate**

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

### **87ZF Powers of investigators**

- (1) An investigator may, by written notice, require an investigated person or an associated person for an investigated person—
  - (a) to produce to the investigator a document that is in the custody or control of the investigated person or associated person; and
  - (b) to give the investigator all reasonable help in connection with the investigation.
- (2) An investigator may, by written notice, require an investigated person, or an associated person for an investigated person, who is an individual to appear before the investigator for examination on oath or affirmation.
- (3) An investigator may administer an oath or affirmation.
- (4) For an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.

### **87ZG Documents produced to investigator**

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

- (2) The investigator must allow a person who would be entitled to inspect the document if it were not being kept by the investigator to inspect the document at all reasonable times.
- (3) The investigator must allow an owner of the document to copy it.

### **87ZH Examination of investigated person or associated person**

- (1) An investigated person or associated person for an investigated person must not—
  - (a) fail to comply with a lawful requirement (a *relevant requirement*) of the investigator to the extent the person is able to comply with it; or
  - (b) in purported compliance with a relevant requirement, give information knowing it to be false or misleading in a material particular; or
  - (c) when appearing before an investigator for examination under a relevant requirement—
    - (i) state anything knowing it is false or misleading in a material particular; or
    - (ii) fail to be sworn or to make an affirmation.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to a person if the person, when giving information in a document—
  - (a) tells the investigator, to the best of the person's ability, how the information is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the investigator.
- (3) A person who complies with the requirement of an investigator under this section does not merely because of the compliance—

[s 87ZI]

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- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy; or
  - (b) incur any civil liability.
- (4) A person required to attend for examination under this part is entitled to the allowances and expenses prescribed by regulation.

### **87ZI Self-incrimination and legal professional privilege**

- (1) This section applies to a person who is an investigated person or an associated person for an investigated person if the person is required to answer a question put to the person by an investigator or produce a document to an investigator.
- (2) The person is not excused from failure to comply with the requirement on the basis that complying—
  - (a) might tend to incriminate the person or expose the person to a penalty; or
  - (b) in the case of an investigated person mentioned in section 87ZC(2) or an associated person for an investigated person mentioned in section 87ZC(2), would disclose a privileged client communication.
- (3) The investigator must inform the person, in a way that is reasonable in the circumstances, that—
  - (a) the person must comply with the requirement even though complying—
    - (i) might tend to incriminate the person or expose the person to a penalty; or
    - (ii) would disclose a privileged client communication; and
  - (b) if the person is an individual—under section 87ZQ, there is a limited immunity against the future use of the information or document given in compliance with the requirement.

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- (4) If the person is an individual and the individual fails to comply with the requirement when the investigator has failed to comply with subsection (3), the individual may not be convicted of the offence against section 87ZH(1).
  - (5) If, in complying with a requirement made under section 87ZH, the person discloses a privileged client communication—
    - (a) the person is taken for all purposes not to have breached legal professional privilege in complying with the requirement; and
    - (b) the disclosure does not constitute a waiver of legal professional privilege or otherwise affect any claim of legal professional privilege for any purpose other than a proceeding for an offence against section 36A, 36D, 36E, 37AB, 39A, 41A, 74(1) or (2) or 75.
  - (6) In this section—

*privileged client communication* means communication protected against disclosure by legal professional privilege that operates for the benefit of a client of an investigated person.

### **87ZJ Failure of person to comply with requirement of investigator**

- (1) If an investigated person or associated person for an investigated person fails to comply with a requirement of an investigator, the investigator may give the Supreme Court a certificate about the failure to comply.
- (2) If an investigator gives a certificate under subsection (1), the court may inquire into the case and may—
  - (a) order the person to comply with the requirements of the investigator within a period fixed by the court; and
  - (b) if the court is satisfied that the person failed without lawful excuse to comply with the requirement of the investigator—punish the person in the same way as if the person had been guilty of contempt of the court.

### **87ZK Recording of examination**

- (1) An investigator must make a record of the questions asked and the answers given at an examination under this part.
- (2) Subject to section 87ZQ, a record of the examination of a person under this part may be used in evidence in a legal proceeding against the person.
- (3) A copy of the record of the examination of a person must be given to the person on the written request of the person without fee.
- (4) The record must be included with the investigator's final report on the investigation.
- (5) Nothing in this section affects or limits the admissibility of other written or oral evidence.

### **87ZL Report of investigator**

- (1) An investigator may, and, if directed by the commission, must make interim reports to the commission.
- (2) On the completion or termination of the investigation, the investigator must report to the commission the investigator's opinion on the matters under investigation, together with the facts on which the opinion is based.
- (3) A copy of a final report must, and a copy of the whole or a part of an interim report may, be given by the commission to the investigated person to which the report relates.
- (4) However, the commission is not bound to give an investigated person a copy of a report, or a part of a report, if the commission is of the opinion that there is good reason for not divulging its contents.
- (5) If the commission is of the opinion that it is in the public interest, the commission may publish, on its website and any other place the commission considers appropriate, the whole or a part of a report.
- (6) If an investigator has given a record of an examination under this part to the commission with the report to which the record



relates, a copy of the record may be given to any person, and on the conditions, that the commission considers appropriate.

### **87ZM Admission of investigator's report in evidence**

- (1) A document certified by the commission to be a copy of an investigator's report is admissible in a legal proceeding as evidence of any facts stated in the report.
- (2) Nothing in this section operates to diminish the protection given to witnesses by law.

### **87ZN Documents taken during investigation**

- (1) On the completion or termination of the investigation, an investigator must give the commission any documents the investigator has taken possession of under this part.
- (2) The commission may—
  - (a) keep the documents for the period that the commission reasonably considers necessary to enable a decision to be made about whether or not a legal proceeding ought to be started; and
  - (b) keep the documents for any further period the commission reasonably considers necessary to enable a legal proceeding to be started and continued.
- (3) The commission may—
  - (a) allow other persons to inspect the documents while they are in the commission's possession; and
  - (b) allow the use of the documents for a legal proceeding started because of the investigation.
- (4) The commission must allow a person who would be entitled to inspect a document if it were not in the commission's possession to inspect the document at all reasonable times.

### **87ZO Costs of investigation**

- (1) The commission may recover the costs of and incidental to an investigation under this part from the investigated person to which the investigation relates.
- (2) However, costs may not be recovered from an investigated person under this section if the investigation established—
  - (a) for an insurer or related body corporate for an insurer—no irregularity on the part of the insurer or related body corporate; or
  - (b) for an investigated person mentioned in section 87ZC(2)—no evidence of a contravention by the person of section 74(1) or (2) or 75.

### **87ZP Other offences about investigations**

- (1) A person must not—
  - (a) conceal, destroy, mutilate or alter a document of or about an investigated person whose affairs are being investigated under this part; or
  - (b) send, cause to be sent or conspire with someone else to send out of the State a document mentioned in paragraph (a) or any property belonging to or under the control of the investigated person.

Maximum penalty—300 penalty units or 2 years imprisonment.

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

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**87ZQ Evidential immunity for individuals complying with particular requirements**

- (1) This section applies if an individual gives or produces information or a document to an investigator under section 87ZF.
- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) However, this section does not apply to—
  - (a) a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence; or
  - (b) a proceeding for an offence against section 36A, 36D, 36E, 37AB, 39A, 41A, 74(1) or (2) or 75.

**87ZR Extraterritorial application of part**

- (1) This part applies both within and outside Queensland to the extent necessary for any investigation of—
  - (a) a contravention of section 36A, 36D, 36E, 37AB, 39A, 41A, 74(1) or (2) or 75; or
  - (b) the affairs of an investigated person under section 87ZC(2).
- (2) For subsection (1), this part applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

**87ZS Confidentiality of information**

- (1) An investigator must not, whether directly or indirectly, disclose confidential information.

Maximum penalty—100 penalty units.

- (2) However, subsection (1) does not apply if—
- (a) the confidential information is disclosed—
    - (i) in the performance of functions under this part; or
    - (ii) with the written consent of the person to whom the information relates; or
    - (iii) to the person to whom the information relates; or
    - (iv) in a form that could not identify any person; or
  - (b) the disclosure of the confidential information is authorised under an Act or another law.
- (3) In this section—
- confidential information* means information that has become known to an investigator in the course of performing the investigator's functions for this part.

## Part 6 Miscellaneous

### 88 Information to be provided by licensed insurers

- (1) A licensed insurer must provide the commission with—
- (a) periodic returns, as required by regulation, containing the information required by regulation; and
  - (b) other information—
    - (i) about claims against the insurer (including claims arising before the commencement of this Act); or
    - (ii) relevant in another way to the administration of this Act;
- that is required by regulation, or that the commission may require by written notice to the insurer.
- (2) An insurer may, for example, be required to provide—
- (a) details of claims against the insurer, and the dates when notice of the claims were received by the insurer; and

- (b) information about the claimants; and
  - (c) information about whether liability was admitted by the insurer, when liability was admitted or denied and, if liability was admitted, the extent to which liability was admitted; and
  - (d) information about the rehabilitation services made available to the claimant and the extent to which the rehabilitation services were used by the claimant; and
  - (e) information about the costs of the insurer on claims, and how the costs are made up.
- (3) The information—
- (a) must be provided by means of systems for the processing and transmission of information that comply with reasonable requirements imposed by the commission; and
  - (b) must be provided in a form reasonably required by the commission.
- (4) An insurer must not fail to comply with a requirement imposed under this section.
- Maximum penalty—150 penalty units and a further 50 penalty units for each week until the requirement is complied with.
- (5) A court that convicts a licensed insurer of an offence against this section may, by order, withdraw the licence.

### **88A Commission's power to intervene to establish information processing systems**

- (1) This section applies if—
- (a) the commission, by written notice given to a licensed insurer, requires the insurer to establish, within the reasonable time stated in the notice, systems for the processing and transmission of information that comply with specified reasonable requirements; and

- (b) the insurer fails to comply with the requirement within the stated time.
- (2) The commission may engage contractors to establish the required systems for the processing and transmission of information and authorise them to enter the licensed insurer's premises when the premises are open for business to carry out the necessary work.
- (3) The licensed insurer must—
  - (a) allow an authorised contractor access to the insurer's premises and facilities for the purpose of establishing the required systems for the processing and transmission of information; and
  - (b) must, at the request of an authorised contractor, provide cooperation and assistance the contractor reasonably needs to carry out the work effectively.

Maximum penalty—150 penalty units.

- (4) The commission may recover the cost of work carried out under this section as a debt from the licensed insurer.
- (5) A court that convicts a licensed insurer of an offence against this section may, by order, withdraw the licence.

## **89 Register of claims**

- (1) The commission must keep a register of claims.
- (2) The register must contain information provided under this Act by insurers that the commission considers appropriate for inclusion in the register.
- (3) The information contained in the register must be accessible to licensed insurers and others to the extent that the commission decides.
- (4) However, information that would, if it became generally known, affect an insurer's competitive position must not be disclosed in a form that would enable the insurer's identification.

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## **90 Transport administration to provide certain information**

- (1) Transport administration must, on receipt of an application accompanied by the appropriate fee decided by transport administration, inform the applicant—
  - (a) whether a motor vehicle mentioned in the application was insured under this Act as at a specified date; and
  - (b) if so—the licensed insurer under the CTP insurance policy.
- (2) A certificate given by a delegate of transport administration to the effect that a particular licensed insurer, or the Nominal Defendant, was, on a specified date, the insurer of a particular motor vehicle under the statutory insurance scheme must be accepted as evidence of the fact certified.
- (3) Subsections (4) and (5) apply if there is a delegation by transport administration of a power to give a certificate under subsection (2).
- (4) Proof of the delegation is not required in a proceeding unless the defendant gives the entity responsible for prosecuting the proceeding a notice of intention to challenge the delegation at least 10 business days before the hearing date.
- (5) The notice must be in the form approved by transport administration.

## **91 Insolvent insurers**

- (1) If the commission publishes a gazette notice to the effect that a named insurer previously licensed under this Act became insolvent on a particular date, the insurer is presumed, for the purposes of this Act, to have become insolvent on that date.
- (2) The liquidator of an insolvent insurer must at the commission's request give any information the commission requires about the stage reached by the insurer in processing claims before becoming insolvent and any other information reasonably required by the commission.

Maximum penalty—25 penalty units.

## **92 Disclosure of information**

- (1) A person engaged in work related to the administration of the statutory insurance scheme, or claims made under the scheme, must not divulge information of a private or confidential nature acquired during the work other than as authorised or required by the terms of the person's employment or by law.

Maximum penalty—50 penalty units.

- (2) This section does not prevent—
- (a) the exchange of information between insurers; or
  - (b) any other form of disclosure authorised or required by the industry deed or regulation.

## **94 Interference with certain documents**

A person must not, without proper reason, interfere with documents relevant to the selection of insurers under the statutory insurance scheme.

Maximum penalty—150 penalty units.

## **95 Unauthorised policies**

A person other than a licensed insurer must not purport to issue a CTP insurance policy under this Act.

Maximum penalty—300 penalty units for each policy purportedly issued.

## **96 Inducement for CTP insurance business prohibited**

- (1) A licensed insurer or other person acting for a licensed insurer must not give, or offer to give, to an entity, including an entity acting for the insurer, an inducement for directing CTP insurance business to the licensed insurer.

Maximum penalty—300 penalty units

- (2) A licensed insurer or other person does not contravene subsection (1) if—



- 
- (a) the inducement is given or offered to be given to an entity only on the basis that the entity will direct an associate of the entity—
    - (i) to enter into or renew a CTP insurance policy with the licensed insurer; and
    - (ii) to ask the licensed insurer, on each occasion the associate pays a premium to the licensed insurer, to make a particular donation to—
      - (A) a particular registered charity; or
      - (B) a particular road safety research entity; or
      - (C) an entity prescribed under a regulation; and

*Note—*

‘Direct’ has a meaning that corresponds to the defined term *directing CTP insurance business*.

- (b) the inducement is the donations made by the licensed insurer on every occasion the associate makes the request mentioned in paragraph (a)(ii); and
  - (c) the licensed insurer does not intend to, and does not, establish or treat the cost of the inducement as a cost, expense or charge under or against the insurer’s CTP insurance policies or CTP business generally.
- (3) Also, a licensed insurer or other person does not contravene subsection (1) in relation to a CTP insurance policy if—
- (a) the entity to whom the inducement is given, or offered to be given, is the person who is to enter or renew the CTP insurance policy (the ***policy holder*** or ***proposed policy holder***); and
  - (b) the licensed insurer does not intend to, and does not, establish or treat the cost of the inducement as a cost, expense or charge under or against the insurer’s CTP insurance policies or CTP business generally.
- (4) However, subsection (3) does not apply if—
- (a) the policy holder or proposed policy holder conducts the business of selling motor vehicles; and

- (b) the CTP insurance policy is for a motor vehicle that will be sold in the ordinary course of the business, even if the vehicle is not for sale when the inducement is given or offered; and
- (c) the entering or renewal of the CTP insurance policy by the policy holder or proposed policy holder would effectively direct CTP insurance business to the licensed insurer when the vehicle is sold.
- (5) Subsections (2), (3) and (4) provide for exemptions under the *Justices Act 1886*, section 76.
- (6) A court that convicts a licensed insurer of an offence against subsection (1) may, by order, withdraw the licence.
- (7) In this section—

*associate* includes member, employee or supporter.

*directed CTP insurance business* means the CTP insurance business directed to, or obtained for, a licensed insurer because of an inducement.

*directing CTP insurance business*, to a licensed insurer, includes—

- (a) obtaining CTP business for a licensed insurer; and
- (b) giving any form of advice, encouragement or suggestion intended to direct CTP business to a licensed insurer.

*inducement* means any reward, consideration or benefit, including, for example, the following—

- (a) a commission;

*Examples—*

- commissions based on any premium for CTP insurance policies resulting from directed CTP insurance business
- commissions paid on insurance products not involving CTP insurance business but based on directed CTP insurance business

- (b) an administration payment;

*Example—*

- a fee payable to a motor dealer based on the cost to the motor dealer for work done in directing the directed CTP insurance business to the licensed CTP insurer
- (c) general financial support.

*Examples (where the directed CTP insurance business is being directed to a CTP insurer by a motor dealer)—*

- discounts or subsidies applying to premiums for insurance relating to the motor dealer's business or business connected to the motor dealer's business
- contributions made to the motor dealer's general operating expenses, including floor plan charges, entertainment, sponsorship, memberships, sales incentive awards and associated functions

**registered charity** means—

- (a) a charity registered under the *Collections Act 1966*; or
- (b) a charity registered under a law of another State—
- (i) that is prescribed under a regulation for this section; or
- (ii) if a law is not prescribed under subparagraph (i)—with objects similar to the *Collections Act 1966* and that provides for the registration of charities.

**road safety research entity** means an entity that is, or is conducting, a research program, affiliated with a university, relating to—

- (a) the causes of motor vehicle accidents and their prevention; or
- (b) rehabilitation of persons injured in motor vehicle accidents.

## **97 CTP premiums not to be discounted etc.**

- (1) A licensed insurer or a broker or other person acting for a licensed insurer must not—

- (a) discount, reduce, waive, or defer payment of the premium on a CTP insurance policy; or
- (b) offer to discount, reduce, waive, or defer payment of the premium on a CTP insurance policy; or
- (c) give or offer to give a rebate on the premium on a CTP insurance policy.

Maximum penalty—300 penalty units.

- (2) A licensed insurer or a broker or other person acting for a licensed insurer must not pay or subsidise, or offer to pay or subsidise, any fee payable on registration, or renewal of registration, of a motor vehicle by a person who has selected, or proposes to select, the licensed insurer to be the insurer under a CTP insurance policy for the vehicle.

Maximum penalty—300 penalty units.

- (3) A licensed insurer, a broker or other person (whether acting for a licensed insurer or not) must not encourage another to make a payment calculated to result in a reduced insurer's premium for an insurer.

Maximum penalty—300 penalty units.

- (4) A licensed insurer does not contravene this section by accepting a reduced insurer's premium in circumstances where the reduced payment is authorised under this Act.
- (5) A licensed insurer or other person acting for a licensed insurer must not give, or offer to give, to a person an inducement to enter into or renew an insurance policy, including a CTP insurance policy, with the insurer if the insurer intends to establish or treat the cost of the inducement as a cost, expense or charge under or against the insurer's CTP insurance policies or the insurer's CTP business generally.

*Examples of an inducement—*

- 1 A licensed insurer offers a discount to policy holders who hold several policies of insurance with the insurer. The offer is available if one of the policies is a CTP insurance policy. The discount is applied to a policy that is not a CTP insurance policy, but the cost of the discount is held partly against the account for the CTP insurance policy.

- 2 A licensed insurer offers to give a person a gift if the person selects the licensed insurer as the insurer under a CTP insurance policy for the person's motor vehicle. The insurer intends to treat the cost of the gift as a cost of the insurer's CTP business.

Maximum penalty—300 penalty units.

- (6) A court that convicts a licensed insurer of an offence against this section may, by order, withdraw the licence.

## **99 Penalties for offences**

Any monetary penalty recovered for an offence against this Act must be paid into the Motor Accident Insurance Fund.

## **100 Regulations**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may create offences and prescribe penalties of not more than 60 penalty units for each offence.

## **100A Indexation of particular amounts**

- (1) The Minister must, on or before 1 July 2011 and on or before 1 July in each succeeding year, recommend to the Governor in Council the amounts that are to be prescribed under a regulation as—
  - (a) the declared costs limit; and
  - (b) the lower offer limit; and
  - (c) the upper offer limit.
- (2) Each amount recommended for a limit is to be the amount last prescribed under a regulation for the limit adjusted by the percentage change in average weekly earnings over the 12 months preceding the date of the recommendation and rounded to the nearest ten dollar.
- (3) However, if the percentage change in average weekly earnings over the 12 months preceding the date of the recommendation

would reduce the amount prescribed as the limit or result in no change to the amount, the Minister need not make a recommendation.

- (4) If the percentage change in average weekly earnings mentioned in subsection (2) is not available from the Australian Statistician, the Minister must advise the Governor in Council accordingly.
- (5) If the Minister advises the Governor in Council of the unavailability of the percentage change under subsection (4), the amount prescribed as the limit is the amount decided by the Governor in Council.
- (6) A regulation notified after 1 July in a year and specifying a date that is before the date it is notified as the date from which the amount prescribed as the limit is to apply has effect from the specified date.
- (7) Subsection (6) applies despite the *Statutory Instruments Act 1992*, section 34.
- (8) This section does not limit the power of the Governor in Council to amend the amount prescribed under a regulation for a limit.

## **101 Periodical reviews**

- (1) Whenever it appears necessary to review this Act to ensure that it is adequately meeting community expectations and its provisions remain appropriate, the Minister must have such a review carried out.
- (2) The Minister must cause a report of the outcome of a review under subsection (1) to be laid before the Legislative Assembly.

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## **Part 7**                      **Transitional provisions**

### **Division 1**                      **Provisions for Act before commencement of Motor Accident Insurance Amendment Act 1999 and a related matter**

#### **102 Insurance Act 1960 references**

In an Act or document, a reference to the *Insurance Act 1960* may, if the context permits, be taken to be a reference to this Act.

#### **103 Motor Vehicles Insurance Act 1936 references**

In an Act or document, a reference to the *Motor Vehicles Insurance Act 1936* may, if the context permits, be taken to be a reference to this Act.

#### **104 Personal injury claims**

- (1) A contract of insurance in force under the former Act immediately before the commencement of this Act continues in force until the earlier of the following—
  - (a) the contract is replaced by a CTP insurance policy under this Act;
  - (b) 30 days after the end of the registration period to which it related.
- (2) If personal injury arises out of a motor vehicle accident happening before the commencement of this Act, a claim for the personal injury must be dealt with as if this Act had not been enacted.
- (3) If personal injury arises out of a motor vehicle accident happening on or after the commencement of this Act, a claim for the personal injury must be dealt with under this Act (even

though the accident may have happened while a policy of insurance issued under the former Act remains in force).

- (4) This section is enacted to remove any doubt and does not affect the operation of the *Acts Interpretation Act 1954*, section 20A in relation to section 104 of this Act as originally enacted after the expiry of that section on 31 December 1995.

## **106 Nominal Defendant**

- (1) The Nominal Defendant under this Act succeeds to rights and liabilities of the Nominal Defendant under the former Act for personal injury arising out of motor vehicle accidents that happened before the commencement of this Act.
- (2) If the insurer liable under a contract of insurance issued under the former Act becomes insolvent—
  - (a) the Nominal Defendant succeeds to the insolvent insurer's rights and liabilities under the contract of insurance; and
  - (b) the provisions of this Act that apply to the insolvency of an insurer under a CTP insurance policy apply with any changes prescribed by regulation.
- (3) The Motor Vehicle Insurance Nominal Defendant Fund established under the former Act is closed and the balance standing to its credit at the commencement of this Act must be dealt with as follows—
  - (a) an amount that is, in the State Actuary's opinion, enough to meet liabilities of the Nominal Defendant under this section must be transferred to the Nominal Defendant Fund under this Act;
  - (b) any balance must be transferred to the Motor Accident Insurance Fund under this Act.
- (4) If the amount paid to the credit of the Nominal Defendant Fund proves insufficient to meet the liabilities of the Nominal Defendant under this section, the commissioner must make payments from the Motor Accident Insurance Fund to meet the deficiency, but the total payments from the Motor



Accident Insurance Fund under this section can not be more than the amount transferred to the fund under subsection (3).

- (5) Section 33(5) further limits the total payments that may be made under subsection (4) from the Motor Accident Insurance Fund.

## **Division 2                      Provision for Motor Accident Insurance Amendment Act 1999**

### **107      Regulation for assessment period starting before 30 June 1999**

- (1) Section 15(2) to (4) does not apply to a regulation under section 15(1) fixing the levies, administration fee and insurance premiums for an assessment period starting before 30 June 1999.
- (2) A regulation mentioned in subsection (1) is valid even though no recommendations are made to the Minister under section 12(2) for the assessment period to which the regulation relates.

## **Division 3                      Provisions for Motor Accident Insurance Amendment Act 2000**

### **108      Application of amendments made by the Motor Accident Insurance Amendment Act 2000 to motor vehicle accident claims**

- (1) In this section—  
*relevant amendment* means an amendment to this Act made by the *Motor Accident Insurance Amendment Act 2000*.
- (2) This Act, as amended by a relevant amendment—
  - (a) applies to a motor vehicle accident claim arising from a motor vehicle accident that happens on or after the commencement of the relevant amendment; and

- (b) governs the terms and conditions of a CTP insurance policy under this Act, in so far as it is relevant to any such motor vehicle accident claim, irrespective of whether the policy came into force before or after the commencement of the relevant amendment.
- (3) This Act, as in force before the commencement of a relevant amendment, applies to a motor vehicle accident claim arising from a motor vehicle accident that happened before the commencement of the relevant amendment.

### **109 Special provision about financial years**

For this Act, the period commencing on 1 July 2000 and ending on 30 September 2000 and the period commencing on 1 October 2000 and ending on 30 June 2001 are taken to be separate financial years.

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

- (1) This section applies to anything done with a view to—
  - (a) fixing levies for the financial year commencing on 1 October 2000; or
  - (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.

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## **Division 4                      Provision for Treasury Legislation Amendment Act (No. 2) 2002**

### **111      Ratification of action taken in anticipation of amendments made by Treasury Legislation Amendment Act (No. 2) 2002**

- (1) This section applies to anything done for setting insurer's premiums for the assessment period commencing on 1 July 2003.
- (2) Anything done in anticipation of amendments to this Act made by the *Treasury Legislation Amendment Act (No. 2) 2002*, sections 14 to 17, that could have been validly done under this Act if the amendments had commenced when the thing was done is taken to have been validly done under this Act.

## **Division 6                      Transitional provisions for the Motor Accident Insurance and Other Legislation Amendment Act 2010**

### **113      Termination of s 96 inducement**

- (1) This section applies to an arrangement entered into before 1 October 2010 between a licensed insurer, or a person acting for a licensed insurer, and another entity (the *entity*) if under the arrangement—
  - (a) a prohibited inducement is to be given to the entity on or after 1 October 2010 for directing CTP insurance business to the licensed insurer before, on or after 1 October 2010; or
  - (b) a prohibited inducement has been given to the entity before 1 October 2010 for directing CTP insurance business to the licensed insurer on or after 1 October 2010.

- (2) The arrangement is terminated, and is void and unenforceable, to the extent it makes provision for—
  - (a) the prohibited inducement; and
  - (b) directing CTP insurance business to the licensed insurer in return for the prohibited inducement.
- (3) No compensation is payable to any person for the termination of the arrangement.
- (4) The following are taken not to be in breach of the terminated arrangement—
  - (a) the licensed insurer, or person acting for the licensed insurer, for failing to give the prohibited inducement mentioned in subsection (2)(a) to the entity in accordance with the provisions of the terminated arrangement;
  - (b) the entity, for failing to direct the CTP insurance business to the licensed insurer in return for the prohibited inducement mentioned in subsection (1)(a) or (b) in accordance with the provisions of the terminated arrangement.
- (5) If, before 1 October 2010, the entity has received an amount that on the commencement of this section becomes a prohibited inducement under a terminated arrangement, the entity within a reasonable period must repay the amount to the licensed insurer, or the person acting for a licensed insurer, who gave the amount to the entity.
- (6) If the entity fails to repay an amount under subsection (5), the licensed insurer, or other person entitled to be repaid the amount, may recover it as a debt.
- (7) In this section—

*arrangement* includes contract and agreement.

*prohibited inducement* means an inducement of a type mentioned in section 96(1) the giving or offering of which would be prohibited under section 96(1) if the arrangement were entered into on or after 1 October 2010.

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*terminated arrangement* means the arrangement to which subsection (2) applies to the extent it is terminated by the subsection.

#### **114 Termination of s 97(5) inducement**

- (1) This section applies if—
  - (a) before 1 October 2010, a licensed insurer, or other person acting for a licensed insurer, offered to give to a person an inducement to enter into or renew an insurance policy; and
  - (b) the offer would be prohibited under section 97(5) if made on or after 1 October 2010; and
  - (c) the inducement would, apart from this section, under the provisions of the arrangement relating to the offer, be given on or after 1 October 2010 to the person to whom the offer was made.
- (2) The arrangement relating to the offer, to the extent it provides for the inducement, is terminated and is void and unenforceable.
- (3) The licensed insurer, or other person acting for the licensed insurer, is taken not to be in breach of the arrangement for failing to give the inducement to the person to whom the offer was made.
- (4) In this section—

*arrangement* includes contract and agreement.

### **Division 7                      Transitional provisions for Motor Accident Insurance and Other Legislation Amendment Act 2019**

#### **115 Certificate matters apply to conduct on and after commencement**

- (1) This section applies if—

[s 116]

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- (a) a law practice is retained by a claimant before the commencement to act in relation to the claimant's claim; and
  - (b) immediately before the commencement, the claim has not been settled, decided by a court or otherwise concluded.
- (2) Despite section 36B, a law practice certificate for the claim that the supervising principal of the law practice may be required to complete and give to a person under section 36A, 36E, 37AB, 39A or 41A must state the matters in section 36B(2) to (4) only in relation to conduct on and after the commencement.
- (3) In this section—
- claimant* includes a potential claimant.
- supervising principal* includes a person who is completing a certificate under section 36C.

**116 Maximum amount of legal costs for claims does not apply to work starting before commencement**

- (1) This section applies if—
- (a) a law practice is retained by a client before the commencement to act in relation to the client's speculative motor accident claim; and
  - (b) the law practice continues to have the conduct of the claim on the commencement.
- (2) Section 79 does not apply to the legal costs the law practice may charge and recover from the client for work done in relation to the claim.
- (3) In this section—
- legal costs* see the *Legal Profession Act 2007*, section 346.
- speculative motor accident claim* means a claim or potential claim if the right of a law practice to charge and recover legal costs from the client who made the claim for work done is dependent on the client's success in pursuing the claim.

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# Schedule Policy of insurance

## section 23(1)

## 1 Extent of insurance cover

- (1) This policy insures against liability for personal injury caused by, through or in connection with the insured motor vehicle anywhere in Australia.
- (2) This policy extends to liability for personal injury caused by, through or in connection with a trailer attached to the insured motor vehicle or that results from the trailer running out of control after becoming accidentally detached from the insured motor vehicle.
- (3) The liability mentioned in subsection (1) or (2)—
  - (a) is a liability for personal injury to which the *Motor Accident Insurance Act 1994* applies; and  
*Editor's note—*  
See section 5 of the Act.
  - (b) includes the liability of a tortfeasor to make a contribution to another tortfeasor who is also liable for the personal injury.
- (4) This policy does not insure a person (the *injured person*) against injury, damage or loss—
  - (a) that arises independently of any wrongful act or omission; or
  - (b) to the extent that the injury loss or damage is attributable to the injured person's own wrongful act or omission.

## 2 Insured person

The person insured by this policy is the owner, driver, passenger or other person whose wrongful act or omission in respect of the insured motor vehicle causes the injury to

someone else and any person who is vicariously liable for the wrongful act or omission.

### **3 Exclusions**

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