



Australian Capital Territory

Road Transport (Third-Party Insurance) Act 2008

A2008-1

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About this republication

The republished law

This is a republication of the *Road Transport (Third-Party Insurance) Act 2008* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 3 March 2010. It also includes any amendment, repeal or expiry affecting the republished law to 3 March 2010.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

Road Transport (Third-Party Insurance) Act 2008

An Act about third-party insurance, and for other purposes

Chapter 1 Preliminary

Part 1.1 Introduction

1 Name of Act

This Act is the *Road Transport (Third-Party Insurance) Act 2008*.

Note 1 This Act is part of the road transport legislation. See the *Road Transport (General) Act 1999* for various provisions about the administration and enforcement of the road transport legislation generally.

Note 2 Other road transport legislation includes the following:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (General) Act 1999*
- *Road Transport (Mass, Dimensions and Loading) Act 2009*
- *Road Transport (Public Passenger Services) Act 2001*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Vehicle Registration) Act 1999*.

Note 3 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*road transport legislation*—see the *Road Transport (General) Act 1999*, section 6.' means that the term 'road transport legislation' is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 1.2 Important concepts

6 What is a *personal injury*?

In this Act:

personal injury means bodily injury and includes—

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

Examples—psychological or psychiatric injury

mental or nervous shock

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

7 Meaning of *motor accident* and *injured person*

In this Act:

motor accident means an incident that—

- (a) involves the use or operation of a motor vehicle; and
- (b) causes personal injury to an individual (the *injured person*); and
- (c) happens when—
 - (i) someone is driving the motor vehicle; or
 - (ii) someone or something collides with the motor vehicle; or

- (iii) someone takes action to avoid colliding with the motor vehicle; or
- (iv) the motor vehicle runs out of control.

8 **When does someone *use* a motor vehicle?**

- (1) For this Act:

use, a motor vehicle, includes—

- (a) drive, park or stop the vehicle on a road or road related area; and
 - (b) maintain the vehicle; and
 - (c) if the vehicle is towing a trailer—use the trailer while attached to the vehicle; and
 - (d) if the vehicle is a tow truck towing or carrying an uninsured motor vehicle—use or operate the uninsured vehicle being towed or carried; and
 - (e) anything else prescribed by regulation.
- (2) Also, if a trailer being towed by a motor vehicle becomes detached from the vehicle and runs out of control, the *use* of the vehicle is taken to include the trailer while it is running out of control.

9 **What is the *insurance industry deed*?**

In this Act:

insurance industry deed means a deed that—

- (a) is between—
 - (i) the Territory; and
 - (ii) the nominal defendant; and
 - (iii) licensed insurers; and

- (b) regulates the conduct of CTP insurance business and matters incidental to—
 - (i) the conduct of CTP insurance business; and
 - (ii) the compulsory third-party insurance scheme under this Act.

Note **CTP insurance business**, for a licensed insurer, means any business associated with CTP policies (see s 11).

10 What may be included in the insurance industry deed?

- (1) The insurance industry deed may include provisions for each of the following:
 - (a) the requirements for licensed insurers to make disclosures and reports to the CTP regulator in accordance with stated standards and requirements;
 - (b) the apportionment of liability, and sharing of costs, between licensed insurers;
 - (c) the appointment of a person to arbitrate disputes between 2 or more licensed insurers about a motor accident claim;
 - (d) the sharing of information between CTP insurers for the mutual benefit of insurers;
 - (e) the management of motor accident claims under CTP policies;
 - (f) direction and guidance for licensed insurers about initiating, managing, monitoring and measuring the effectiveness of the provision of rehabilitation services for injured claimants;
 - (g) regulation, in any other way, of the conduct of CTP insurance business under the compulsory third-party insurance scheme under this Act.

Note **CTP insurance business**, for a licensed insurer, means any business associated with CTP policies (see s 11).

- (2) A regulation may prescribe—
- (a) what may or must be included in the insurance industry deed;
and
 - (b) anything else about the content of the deed.

11 What is *CTP insurance business*?

In this Act:

CTP insurance business, for a licensed insurer, means any business of the insurer associated with CTP policies.

12 What is a *registered motor vehicle*?

In this Act:

registered motor vehicle means a motor vehicle registered under—

- (a) the *Road Transport (Vehicle Registration) Act 1999*; or
- (b) the *Interstate Road Transport Act 1985* (Cwlth).

13 Who is the *nominal defendant*?

- (1) For this Act, ACTIA is the ***nominal defendant***.
- (2) Any action or proceeding by or against the nominal defendant must be taken in the name of the ‘nominal defendant’.
- (3) In this section:

ACTIA means the Australian Capital Territory Insurance Authority established under the *Insurance Authority Act 2005*.

14 Who is the *CTP regulator*?

- (1) The Australian Capital Territory Compulsory Third-Party Insurance Regulator (the ***CTP regulator***) is established.
- (2) The chief executive is the CTP regulator.

- (3) Anything done in the name of, or for, the CTP regulator by the chief executive in exercising a function of the CTP regulator is taken to have been done for, and binds, the Territory.
- (4) The CTP regulator may delegate the CTP regulator's functions under the road transport legislation to a public employee.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Chapter 2 Compulsory third-party insurance (CTP insurance)

Part 2.1 CTP insurance—requirement

15 What is an *insured motor vehicle*?

In this Act:

insured motor vehicle means a motor vehicle, or other thing, insured under a CTP policy.

Note The motor vehicles and other things insured under a CTP policy are mentioned in s 19.

16 Who is a *CTP insured person*?

In this Act:

CTP insured person means a person who is insured under a CTP policy.

Note The people insured under a CTP policy are mentioned in s 20.

17 Offence—using uninsured motor vehicle on road or road related area

- (1) A person commits an offence if—
- (a) the person uses a motor vehicle on a road or road related area; and

(b) the vehicle is not an insured motor vehicle.

Maximum penalty: 50 penalty units.

Note 1 *Use*, a vehicle, is defined in s 8 and includes provisions about trailers.
Road and *road related area* are defined in the dictionary.

Note 2 Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

- (2) This section does not apply to a person who uses a motor vehicle on a road or road related area if—
- (a) there is an unregistered vehicle permit in force for the vehicle;
or
 - (b) the registration provisions do not apply to the vehicle because of the *Road Transport (Vehicle Registration) Regulation 2000*, part 2.2 (Vehicles not subject to registration provisions); or
 - (c) the vehicle is exempted from this section by regulation.
- (3) It is a defence to a prosecution for an offence against this section if the defendant establishes that, at the time the motor vehicle was used on the road or road related area, the defendant believed on reasonable grounds that the vehicle was an insured motor vehicle.

Note A trailer does not have to be separately insured (see s 19, s 60 to s 63).

Part 2.2 CTP policies

18 What is a *CTP policy*?

In this Act:

compulsory third-party policy (or *CTP policy*) means an insurance policy—

- (a) the subject of which is something mentioned in section 19; and
- (b) insures someone mentioned in section 20; and
- (c) insures against the risk mentioned in section 21; and
- (d) does not insure against a risk mentioned in section 22.

19 What is insured under a *CTP policy*?

A *CTP policy* has the following subjects:

- (a) a registered motor vehicle;
- (b) a motor vehicle with a valid trader's plate attached;
- (c) a trailer or anything else that—
 - (i) is attached to a vehicle mentioned in paragraph (a) or (b);
or
 - (ii) becomes detached from a vehicle mentioned in paragraph (a) or (b) and runs out of control;
- (d) anything else prescribed by regulation.

20 Who is insured under a *CTP policy*?

A *CTP policy* insures—

- (a) a person who uses an insured motor vehicle; and

- (b) anyone else who is vicariously liable for the person's use of the insured motor vehicle; and
- (c) anyone else prescribed by regulation; and
- (d) if a person mentioned in paragraph (a), (b) or (c) is dead—the person's estate.

21 What risks are covered by a CTP policy?

A CTP policy insures against the risk of liability for personal injury caused by a motor accident.

22 What risks are not covered by a CTP policy?

- (1) A CTP policy does not insure against the risk of 1 or more of the following:
 - (a) liability to pay compensation under the *Workers Compensation Act 1951* (or a corresponding law of a State or another Territory);
 - (b) liability that may be incurred under an agreement unless the liability would have arisen without the agreement;
 - (c) liability that is attributable to an act that, having regard to the nature of the act and the context in which the act was done, it is reasonable to characterise as an act of terrorism;
Note See s (3) in relation to when it is reasonable to characterise an act as an act of terrorism.
 - (d) liability for personal injury, damage or loss—
 - (i) that arises independently of a wrongful act or omission; or
 - (ii) to the extent that the personal injury, loss or damage is attributable to the injured person's own wrongful act or omission;
 - (e) liability to pay exemplary, punitive or aggravated damages;

- (f) liability to pay damages for a personal injury that arises gradually from a series of incidents;
 - (g) any other liability prescribed by regulation.
- (2) To remove any doubt, a CTP policy does not insure the responsible person for a motor vehicle, or the driver of a motor vehicle, if—
- (a) the motor vehicle is in an area that is subject to a declaration under the *Road Transport (General) Act 1999*, section 12 (Power to include or exclude areas in road transport legislation) that has the effect of disapplying this Act; or
 - (b) the motor vehicle is subject to a declaration under the *Road Transport (General) Act 1999*, section 13 (Power to exclude vehicles, people or animals from road transport legislation) that has the effect of disapplying this Act; or
 - (c) the responsible person or driver is subject to a declaration under the *Road Transport (General) Act 1999*, section 13 that has the effect of disapplying this Act.
- (3) For subsection (1) (c)—
- (a) an act cannot be characterised as an act of terrorism unless the act—
 - (i) causes or threatens to cause death, personal injury or damage to property; and
 - (ii) is designed to influence a government or intimidate the public or a section of the public; and
 - (iii) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause; and
 - (b) a lawful activity or industrial action cannot be characterised as an act of terrorism.

23 Who is the *CTP insurer*?

In this Act:

CTP insurer means—

- (a) for an insured motor vehicle—
 - (i) that is a registered motor vehicle—the licensed insurer selected under section 28 (Selecting at first registration) or section 29 (Selecting at renewal of registration) as the CTP insurer for the motor vehicle; or
 - (ii) with a valid trader’s plate attached—the licensed insurer selected under section 30 (Selecting when applying for trader’s plates) as the CTP insurer for a motor vehicle to which the trader’s plate may be attached; or
- (b) for a trailer or other thing that is—
 - (i) mentioned in section 19 (c) (What is insured under a CTP policy?)—the insurer for the motor vehicle to which the trailer or thing is attached or becomes detached; or
 - (ii) prescribed by regulation under section 19 (d)—the entity prescribed by regulation; or
- (c) for a CTP insured person—the CTP insurer for the CTP policy under which the person is insured; or
- (d) for a CTP policy—the CTP insurer that issued the policy.

24 Licensed insurer not to decline etc to issue CTP policy

A licensed insurer cannot repudiate, or decline to issue or renew, a CTP policy.

25 CTP insurer to indemnify insured people

- (1) A CTP policy under this Act is binding on the CTP insurer for the CTP policy.

- (2) The CTP insurer for a CTP policy is, despite any other law, liable to indemnify each CTP insured person for the CTP policy for the liability that the policy purports to cover.
- (3) To remove any doubt, the reference to any other law in subsection (2) does not include a reference to—
 - (a) section 22 (What risks are not covered by a CTP policy?); or
 - (b) a declaration made under the *Road Transport (General) Act 1999*—
 - (i) section 12 (Power to include or exclude areas in road transport legislation); or
 - (ii) section 13 (Power to exclude vehicles, people or animals from road transport legislation).

26 CTP policy not affected by transfer etc of vehicle or trader's plate

- (1) A CTP policy for an insured motor vehicle is not affected by a change in who is the responsible person for the vehicle.
- (2) A CTP policy for a registered motor vehicle is not affected by a transfer of the registration of the vehicle.

Note Registration of a vehicle may be transferred under the *Road Transport (Vehicle Registration) Regulation 2000*, pt 4.2.

- (3) A CTP policy for a motor vehicle with a trader's plate attached is not affected by a transfer of the trader's plate.

Note A trader's plate may be transferred under the *Road Transport (Vehicle Registration) Regulation 2000*, s 100.

- (4) If the road transport authority becomes aware of any of the following changes in relation to an insured motor vehicle, the road transport authority must tell the CTP insurer for the motor vehicle about the change:
 - (a) a change in who is the responsible person for the vehicle;

- (b) a change in registration details of the vehicle;
- (c) a change of person to whom a trader's plate is issued.

27 CTP policy not affected by errors

The validity of a CTP policy is not affected by an error of the road transport authority, or an error of a licensed insurer, in relation to the policy.

Part 2.3 Selecting a CTP insurer

28 Selecting at first registration

If a person applies to the road transport authority for registration of a motor vehicle, the person must also—

- (a) select, in a way approved by the road transport authority, a licensed insurer to be the CTP insurer under a CTP policy for the motor vehicle for the period of registration; and
- (b) pay to the road transport authority the CTP premium for the CTP policy for the period of registration.

Note CTP premiums must be decided in accordance with pt 2.6.

29 Selecting at renewal of registration

If a registered operator of a registered motor vehicle applies for renewal of registration for the motor vehicle, the registered operator must also—

- (a) select, in a way approved by the road transport authority, a licensed insurer to be the CTP insurer under a CTP policy for the motor vehicle for the period of renewed registration; and
- (b) pay to the road transport authority the CTP premium for the CTP policy for the period of renewed registration.

Note CTP premiums must be decided in accordance with pt 2.6.

30 Selecting when applying for trader's plates

If a person applies to the road transport authority for a trader's plate, the person must also—

- (a) select, in a way approved by the road transport authority, a licensed insurer to be the CTP insurer under a CTP policy for a

motor vehicle to which the trader's plate may be attached for the period for which the trader's plate is issued; and

- (b) pay to the road transport authority the CTP premium for the CTP policy for the period for which the trader's plate is issued.

Note 1 The road transport authority may issue a trader's plate to a person under the *Road Transport (Vehicle Registration) Regulation 2000*, s 88.

Note 2 CTP premiums must be decided in accordance with pt 2.6.

Part 2.4 Length of CTP policy

31 CTP policy takes effect on registration or renewal

If the road transport authority registers, or renews the registration of, a motor vehicle, a CTP policy comes into force for the motor vehicle when the registration, or renewal of registration, takes effect.

32 CTP policy in effect while insurer on risk—registered motor vehicles

A CTP policy for a registered motor vehicle is in force for the period for which the CTP insurer is on risk under—

- (a) section 33 (Insurer on risk—period of registration); or
- (b) section 34 (Insurer on risk—period of grace).

33 Insurer on risk—period of registration

- (1) The CTP insurer of a registered motor vehicle is on risk for the period of registration of the motor vehicle.
- (2) However, if the registration is renewed before the previous period of registration ends—
 - (a) the old insurer is on risk until the previous period of registration expires; and
 - (b) the new insurer comes on risk immediately after the previous period of registration expires.
- (3) The CTP insurer ceases to be on risk if the CTP policy is cancelled.

Note Cancellation of CTP policies is dealt with in s 36.

- (4) In this section:

new insurer means the CTP insurer whose insurance is later in time.

Note The old insurer and the new insurer may be the same insurer or different insurers.

old insurer, in relation to a motor vehicle the registration of which is renewed during the period of grace or later, means the last CTP insurer of the vehicle before renewal.

period of registration means—

- (a) the period, not longer than 1 year, for which the registration, or renewed registration, of a motor vehicle is to be in force; or
- (b) if the registration, or renewed registration is cancelled or surrendered before the end of that period—the period for which the registration, or renewed registration, is actually in force.

renewal of registration of a motor vehicle includes registration of the vehicle after the previous registration has expired.

34 Insurer on risk—period of grace

- (1) If registration of a motor vehicle is renewed during the period of grace—
 - (a) the old insurer is on risk until midnight on the day registration is renewed; and
 - (b) the new insurer comes on risk immediately after midnight and is on risk for the period of renewed registration.

Note ***Period of grace*** is defined in s (4).

- (2) If registration is renewed after the period of grace expires—
 - (a) the new insurer comes on risk at the time the renewal of registration is effected; and

- (b) the motor vehicle is not an insured motor vehicle from the expiry of the previous period of registration until the renewal of registration takes effect.
- (3) A CTP insurer ceases to be on risk if the CTP policy is cancelled.
- (4) In this section:

new insurer means the CTP insurer whose insurance is later in time.

Note The old insurer and the new insurer may be the same insurer or different insurers.

old insurer, in relation to a motor vehicle the registration of which is renewed during the period of grace or later, means the last CTP insurer of the vehicle before renewal.

period of grace means the 14 days after the registration, or renewal of registration, of a motor vehicle expires.

Note There is no period of grace following the cancellation or surrender of registration or a renewal of registration of a motor vehicle.

period of registration—see section 33 (4).

renewal of registration of a motor vehicle includes registration of the vehicle after the previous registration has expired.

34A CTP policy takes effect on attachment of trader's plate

If the road transport authority issues a trader's plate to a person, a CTP policy comes into force for a motor vehicle to which the trader's plate is attached—

- (a) when the trader's plate is attached to the motor vehicle; and
(b) only if the trader's plate is a valid trader's plate.

34B CTP policy in effect while insurer on risk—trader's plates

- (1) A CTP policy for a motor vehicle with a valid trader's plate attached is in force for the period for which the CTP insurer is on risk under this section.

- (2) The CTP insurer of the motor vehicle is on risk for the period for which the valid trader's plate is attached to the motor vehicle.
- (3) The CTP insurer ceases to be on risk if the trader's plate is detached from the vehicle.
- (4) The CTP insurer ceases to be on risk if the CTP policy is cancelled.

Note Cancellation of CTP policies is dealt with in s 36A.

Part 2.5 Cancellation of CTP policies

35 CTP insurer cannot cancel CTP policy

A CTP insurer has no power to cancel a CTP policy.

36 CTP policy cancellation—registered vehicles

A CTP policy for a registered motor vehicle is cancelled if the registration of the motor vehicle is cancelled.

36A CTP policy cancellation—trader's plates

- (1) A CTP policy for a motor vehicle with a trader's plate attached is cancelled if—
 - (a) the road transport authority requires the person to whom the trader's plate was issued to return the plate to the authority under the *Road Transport (Vehicle Registration) Regulation 2000*—
 - (i) section 89 (Recall of trader's plates); or
 - (ii) section 101 (Return of trader's plate); or
 - (b) the trader's plate is surrendered to the road transport authority under the *Road Transport (Vehicle Registration) Regulation 2000*, section 102 (Surrender of trader's plates).
- (2) However, the CTP policy is not cancelled if the person returns the trader's plate and the road transport authority issues a replacement trader's plate to the person under the *Road Transport (Vehicle Registration) Regulation 2000*, section 89 (3).

Part 2.6 CTP premiums

Division 2.6.1 Approval of CTP premiums

37 What is a *CTP premium*?

In this Act:

CTP premium, for a CTP policy, means the insurance premium approved under this part for the CTP policy.

38 Licensed insurer to charge approved premium

A licensed insurer may charge a premium for a CTP policy only if the premium is approved under this part.

Note It is a condition of a CTP insurer licence that the licensed insurer must comply with this section (see s 185).

39 CTP regulator may make CTP premium guidelines

- (1) The CTP regulator may make guidelines for premiums for CTP policies (the *CTP premium guidelines*).
- (2) The CTP premium guidelines may—
 - (a) state how CTP premiums are to be worked out and the factors to be taken into account in working out CTP premiums; and
 - (b) require licensed insurers to state how they have worked out CTP premiums; and
 - (c) state the additional information the CTP regulator may require licensed insurers to give to the CTP regulator—
 - (i) with an application for approval of a premium; or

- (ii) to justify CTP premiums they have already given to the CTP regulator for approval.

Example—additional information

for estimated investment earnings—the verification of assumptions, estimated profit, capital allocation to CTP insurance business

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The CTP premium guidelines are a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 It is a condition of a CTP insurer licence that the licensed insurer must comply with CTP premium guidelines (see s 185).

40 Licensed insurer to apply for approval of premiums

- (1) A licensed insurer must apply to the CTP regulator for approval of premiums the licensed insurer proposes to charge for CTP policies the licensed insurer intends to issue—
- (a) after the defined period after the licensed insurer's premiums were last approved by the CTP regulator; or
- (b) if the CTP regulator, by written notice (an **approval notice**), requires the licensed insurer to apply for the approval.
- (2) If a licensed insurer receives an approval notice, the licensed insurer must make the application not later than 4 weeks after the day the licensed insurer receives the approval notice.

Note 1 The CTP premium guidelines may state the additional information the CTP regulator may require licensed insurers to give to the CTP regulator with the application (see s 39).

Note 2 It is a condition of a CTP insurer licence that the licensed insurer must comply with this section (see s 185).

Note 3 If a form is approved under s 276 for this section, the form must be used.

Note 4 A fee may be determined under the *Road Transport (General) Act 1999*, s 96, for this section.

(3) In this section:

defined period means—

- (a) 1 year; or
- (b) if the CTP regulator allows a longer period of time—the longer period allowed by the CTP regulator.

41 CTP regulator to approve or reject premiums

(1) If a licensed insurer applies to the CTP regulator for approval of a premium for a CTP policy, the CTP regulator must—

- (a) approve the premium; or
- (b) reject the premium.

Note Criteria for rejecting the premium are in s 42. The licensed insurer may ask the CTP regulator to reconsider a rejected premium (see s 44).

(2) The CTP regulator must, not later than 6 weeks after the day the CTP regulator receives the application from the licensed insurer—

- (a) decide whether to approve or reject the premium; and
- (b) tell the licensed insurer—
 - (i) about the decision; and
 - (ii) the reasons for the decision.

42 Criteria to reject premium

The CTP regulator may reject a premium for a CTP policy only if the CTP regulator considers that—

- (a) the premium will not fully fund the present and likely future liability under this Act of the licensed insurer; or

Note Criteria for deciding whether a premium will fully fund the present and likely future liability under this Act of a licensed insurer are in s 43.

- (b) having regard to actuarial advice and to other relevant financial information available to the CTP regulator, the premium is excessive; or
- (c) the premium does not comply with the CTP premium guidelines.

Note The CTP premium guidelines are made under s 39.

43 Criteria to decide if premium will fund liabilities

A CTP premium will fully fund the present and likely future liability under this Act of a licensed insurer if the CTP premium is sufficient—

- (a) to pay all acquisition and policy administration expenses of the licensed insurer; and
- (b) to provide an amount of money that together with anticipated investment income is equal to the best estimate of the cost of motor accident claims plus motor accident claim settlement expenses (in inflated dollars) at the assumed date of settlement; and
- (c) to provide a profit margin in excess of all motor accident claims, costs and expenses that represents an adequate return on capital invested and compensation for the risk taken; and

- (d) to provide for other matters that a prudent insurer should, in all the circumstances, make provision for.

44 CTP regulator may reconsider rejected premiums

- (1) If the CTP regulator rejects a premium for a CTP policy (the *original decision*), the licensed insurer may ask the CTP regulator to reconsider the rejected premium.
- (2) Until the rejected premium is reconsidered, the CTP regulator may ask an actuary to decide a provisional premium for the CTP policy.
- (3) A provisional premium has effect, until the CTP regulator makes a decision under subsection (4) in relation to the original decision, as if the provisional premium were a CTP premium.
- (4) The CTP regulator must, not later than 4 weeks after the day the CTP regulator receives the request for reconsideration of the original decision from the licensed insurer—
 - (a) reconsider the original decision; and
 - (b) decide whether to approve or reject the premium; and

Note Criteria for rejecting the premium are in s 42.

 - (c) tell the licensed insurer—
 - (i) about the decision; and
 - (ii) the reasons for the decision.

45 Arbitration of unresolved premiums

- (1) If, under section 44, the CTP regulator again rejects a premium for a CTP policy, the matter must be arbitrated under this section.
- (2) The *Commercial Arbitration Act 1986* applies to the arbitration, subject to this Act.

- (3) The arbitrator for the matter is—
- (a) if the CTP regulator and the licensed insurer agree on an arbitrator—the agreed arbitrator; or
 - (b) if the CTP regulator and the licensed insurer do not agree on an arbitrator—the CTP premium board.
- (4) However, if the matter has been arbitrated by an agreed arbitrator for 7 days and the parties cannot reach agreement, the CTP premium board must arbitrate the matter.

- (5) The arbitrator may approve a premium for a CTP policy only if the premium is, in the arbitrator's opinion, sufficient to fully fund the present and likely future liability of the licensed insurer under this Act.

Note 1 Criteria for deciding whether a CTP premium will fully fund the present and likely future liability under this Act of a licensed insurer are in s 43.

Note 2 A decision under this section by an arbitrator is a reviewable decision (see the *Road Transport (General) Act 1999*, pt 7 and the *Road Transport (General) Regulation 2000*).

- (6) The regulations may make provision for the arbitration of matters.

46 CTP regulator to report on licensed insurer's profit margins

- (1) A licensed insurer must tell the CTP regulator the profit margin on which each CTP premium charged by the licensed insurer is based and the actuarial basis for working out that profit margin.
- (2) The CTP regulator must assess—
- (a) the profit margin; and
 - (b) the actuarial basis on which the profit margin is worked out.
- (3) The CTP regulator must present a report about the assessments annually to the Legislative Assembly.

Division 2.6.2 CTP premium board

47 CTP premium board

The CTP premium board (the *CTP premium board*) is established.

48 Functions of board

The CTP premium board has the following functions:

- (a) to arbitrate matters about premiums for CTP policies;
- (b) any other function prescribed by regulation.

49 Board members

- (1) The CTP premium board has the following members:
 - (a) a chair;
 - (b) a government representative;
 - (c) 3 motorist representatives;
 - (d) 2 CTP insurer representatives.
- (2) A person must not hold 2 or more positions mentioned in subsection (1).

50 Appointment of board members

- (1) The Minister may appoint the members of the CTP premium board.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) The only criteria for deciding whether to appoint a person as a member are—
- (a) that the person has the experience or expertise necessary to exercise the functions of a member; and
 - (b) for the chair—that the person is also a senior lawyer; and
 - (c) for the government representative, that the person also—
 - (i) is a public servant; and
 - (ii) represents the interests of the Territory; and
 - (d) for a motorist representative—that the person also represents the interests of motorists; and
 - (e) for a CTP insurer representative—that the person also represents the interests of CTP insurers.
- (3) The appointment of a member must be for a term of not longer than 3 years.
- (4) The conditions of appointment of a member are the conditions stated in the appointment.
- (5) In this section:
- Australian legal practitioner*—see the *Legal Profession Act 2006*, section 8.
- senior lawyer* means a lawyer who—
- (a) is an Australian legal practitioner; and
 - (b) has been an Australian legal practitioner for at least 10 years; and
 - (c) has practised law in the area of personal injury matters for at least 5 years.

51 Appointment of deputy chair

The CTP premium board may appoint a member, other than the chair, as deputy chair for the CTP premium board.

52 Ending board member appointments

The Minister may end a CTP premium board member's appointment—

- (a) if the member contravenes a territory law; or
- (b) for misbehaviour; or
- (c) if the member becomes bankrupt or executes a personal insolvency agreement; or
- (d) if the member is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or
- (e) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
- (f) if the member exercises the member's functions other than in accordance with section 53; or
- (g) if the member fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions; or
- (h) if the member contravenes section 56 (Disclosure of interests by board members); or
- (i) if the member is absent from 3 consecutive meetings of the board, otherwise than on approved leave; or
- (j) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

53 Honesty, care and diligence of board members

In exercising the functions of a CTP premium board member, a member must exercise the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

54 Conflicts of interest by board members

A CTP premium board member must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions.

55 Board agenda to require disclosure of interest item

The agenda for each meeting of the CTP premium board must include an item requiring any material interest in an issue to be considered at the meeting to be disclosed to the meeting.

56 Disclosure of interests by board members

- (1) If a CTP premium board member has a material interest in an issue being considered, or about to be considered, by the CTP premium board, the member must disclose the nature of the interest at a board meeting as soon as practicable after the relevant facts come to the member's knowledge.

Note **Material interest** is defined in s (4). The definition of *indirect interest* in s (4) applies to the definition of **material interest**.

- (2) The disclosure must be recorded in the CTP premium board's minutes and, unless the board otherwise decides, the member must not—
 - (a) be present when the board considers the issue; or

(b) take part in a decision of the board on the issue.

Example

Albert, Boris and Chloe are members of a CTP premium board. They have an interest in an issue being considered at a CTP premium board meeting and they disclose the interest as soon as they become aware of it. Albert's and Boris's interests are minor but Chloe has a direct financial interest in the issue.

The CTP premium board considers the disclosures and decides that because of the nature of the interests:

- Albert may be present when the board considers the issue but not take part in the decision
- Boris may be present for the consideration and take part in the decision.

The board does not make a decision allowing Chloe to be present or take part in the board's decision. Accordingly, since Chloe has a material interest she cannot be present for the consideration of the issue or take part in the decision.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) Any other CTP premium board member who also has a material interest in the issue must not be present when the board is considering its decision under subsection (2).

(4) In this section:

associate, of a person, means—

- (a) the person's business partner; or
- (b) a close friend of the person; or
- (c) a family member of the person.

executive officer, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

indirect interest—without limiting the kinds of indirect interests a person may have, a person has an ***indirect interest*** in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the person, or an associate of the person, is an executive officer of the corporation;
- (e) the trustee of a trust if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership if the person, or an associate of the person, is a member of the firm or partnership;
- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

material interest—a CTP premium board member has a ***material interest*** in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.

57 Reporting of disclosed CTP premium board interests to Minister

- (1) Within 3 months after the day a material interest is disclosed under section 56 (1), the chair of the CTP premium board must report to the Minister in writing about—
 - (a) the disclosure; and
 - (b) the nature of the interest disclosed; and
 - (c) any decision by the board under section 56 (2).
- (2) The chair must also give the Minister, not later than 31 days after the end of each financial year, a statement that sets out the information given to the Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The Minister must give a copy of the statement to the relevant committee of the Legislative Assembly within 31 days after the day the Minister receives the statement.
- (4) In this section:
relevant committee means—
 - (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or
 - (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

58 Protection of CTP premium board members from liability

- (1) A CTP premium board member is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under a territory law; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under a territory law.

- (2) Any liability that would, apart from this section, attach to a CTP premium board member attaches instead to the Territory.

Part 2.7 Nominal defendant liable for uninsured or unidentified motor vehicles

59 Nominal defendant liable—unregistered vehicle permits

- (1) This section applies if—
- (a) a personal injury is caused by a motor accident; and
 - (b) at the time of the motor accident, an unregistered vehicle permit is in force for the motor vehicle involved in the motor accident; and
 - (c) the motor accident happened anywhere in Australia.

Note **Motor accident** is defined in s 7.
 Personal injury is defined in s 6.

- (2) The nominal defendant is liable in relation to the personal injury as if—
- (a) a CTP policy were in force for the motor vehicle; and
 - (b) the nominal defendant were the CTP insurer for the CTP policy.

Note **CTP policy** is defined in s 18.

- (3) However, the nominal defendant is not liable in relation to the personal injury—
- (a) if—
 - (i) the motor accident happened on an area that is not a road and is open to or used by the public for driving, riding or parking vehicles; and
 - (ii) at the time the motor accident happened, the person injured was a trespasser on the land; or

Note The area described in subpar (i) is a road related area (see dict, def **road related area** par (a) (iv)).

- (b) if the motor vehicle is owned by—
 - (i) the Commonwealth, or an entity representing the Commonwealth; or
 - (ii) the Territory, or an entity representing the Territory; or
- (c) if at the time the motor accident happened—
 - (i) the motor vehicle was registered under either the law of a place other than the ACT or under a law of the Commonwealth; and
 - (ii) the motor vehicle was—
 - (A) covered under a policy of compulsory third-party insurance; or
 - (B) subject to coverage under a compulsory motor vehicle or trailer accident compensation scheme of that place or of the Commonwealth; or
- (d) if a regulation prescribes that, in the circumstances, the nominal defendant is not liable in relation to the personal injury.

Note The nominal defendant is also not liable for the risks mentioned in s 22.

60 What is an *uninsured motor vehicle*?

- (1) For this Act:

uninsured motor vehicle—

- (a) means a motor vehicle for which there is no CTP policy in force; and
- (b) includes a trailer that—
 - (i) is attached to an uninsured motor vehicle; or

- (ii) runs out of control after becoming accidentally detached from an uninsured motor vehicle; and
 - (c) includes anything else prescribed by regulation; but
 - (d) does not include a motor vehicle for which an unregistered vehicle permit is in force.
- (2) To avoid any doubt, it does not matter whether a trailer mentioned in subsection (1) (b) is registered.

61 Nominal defendant liable—uninsured motor vehicle

- (1) This section applies if—
- (a) a personal injury is caused by a motor accident; and
 - (b) at the time of the motor accident, the motor vehicle involved in the motor accident—
 - (i) had a sufficient connection with the ACT; and
 - (ii) was an uninsured motor vehicle; and
 - (c) the motor accident happened anywhere in Australia.

Note 1 **Motor accident** is defined in s 7.

Personal injury is defined in s 6.

Note 2 The circumstances in which a motor vehicle has a sufficient connection with the ACT may be prescribed by regulation (see s (5)).

- (2) The nominal defendant is liable in relation to the personal injury as if—
- (a) a CTP policy were in force for the motor vehicle; and
 - (b) the nominal defendant were the CTP insurer for the CTP policy.

Note **CTP policy** is defined in s 18.

- (3) However, the nominal defendant is not liable in relation to the personal injury—

- (a) if—
- (i) the motor accident happened on an area that is not a road and is open to or used by the public for driving, riding or parking vehicles; and
 - (ii) at the time the motor accident happened, the person injured was a trespasser on the land; or

Note The area described in subpar (i) is a road related area (see dict, def **road related area** par (a) (iv)).

- (b) the uninsured motor vehicle is owned by—
- (i) the Commonwealth, or an entity representing the Commonwealth; or
 - (ii) the Territory, or an entity representing the Territory; or
- (c) at the time the motor accident happened—
- (i) the uninsured motor vehicle was registered under either the law of a place other than the ACT or under a law of the Commonwealth; and
 - (ii) the uninsured motor vehicle was—
 - (A) covered under a policy of compulsory third-party insurance; or
 - (B) subject to coverage under a compulsory motor vehicle or trailer accident compensation scheme of that place or of the Commonwealth; or
- (d) a regulation prescribes that, in the circumstances, the nominal defendant is not liable in relation to the personal injury.

Note The nominal defendant is also not liable for the risks mentioned in s 22.

- (4) In this section:

motor vehicle means a motor vehicle that—

- (a) is exempt from registration; or

- (b) if not exempt from registration—must be registered to allow its lawful use or operation on a road or road related area in the ACT and—
 - (i) was at the time of manufacture capable of registration; or
 - (ii) was at the time of manufacture, with minor adjustments, capable of registration; or
 - (iii) was previously capable of registration but is no longer capable of registration because the motor vehicle is in disrepair.
- (5) A regulation may prescribe the circumstances in which a motor vehicle has a sufficient connection with the ACT.

62 **What is an *unidentified motor vehicle*?**

- (1) In this Act:
 - unidentified motor vehicle*—
 - (a) means a motor vehicle that cannot be identified after reasonable inquiry and search; and
 - (b) includes a trailer that—
 - (i) is attached to an unidentified motor vehicle; or
 - (ii) runs out of control after becoming accidentally detached from an unidentified motor vehicle; and
 - (c) includes anything else prescribed by regulation.
 - (2) To avoid any doubt, it does not matter whether a trailer mentioned in subsection (1) (b) is registered.
 - (3) The inquiry or search may be proved orally or by affidavit of the person who made the inquiry or search.

Note 1 The claimant must prove that reasonable inquiry or search has been carried out before the nominal defendant may be added as a later respondent (see s 91).

Note 2 The respondent must prove that reasonable inquiry or search has been carried out before the nominal defendant may be added as a contributor (see s 93).

63 Nominal defendant liable—unidentified motor vehicle

- (1) This section applies if—
- (a) a personal injury is caused by a motor accident; and
 - (b) the motor vehicle involved in the motor accident is an unidentified motor vehicle; and
 - (c) the motor accident happened in the ACT.

Note **Motor accident** is defined in s 7.
Personal injury is defined in s 6.

- (2) The nominal defendant is liable in relation to the personal injury as if—
- (a) a CTP policy were in force for the motor vehicle; and
 - (b) the nominal defendant were the CTP insurer for the CTP policy.

Note **CTP policy** is defined in s 18.

- (3) However, the nominal defendant is not liable in relation to the personal injury if—
- (a) the motor accident happened on an area that is not a road and is open to or used by the public for driving, riding or parking vehicles; and
 - (b) at the time the motor accident happened, the person injured was a trespasser on the land.

Note 1 The area described in par (a) is a road related area (see dict, def **road related area** par (a) (iv)).

Note 2 The nominal defendant is also not liable for the risks mentioned in s 22.

Chapter 3 Early payment for treatment of motor accident injuries

Part 3.1 Important concepts

68 Who is a person's *insurer*?

In this chapter:

insurer, of a person, for payment of expenses under this chapter means—

- (a) if the person is a CTP insured person—the CTP insurer for the person; or
- (b) if the person is not a CTP insured person—the nominal defendant.

69 What is a *motor accident notification form*?

In this Act:

motor accident notification form, for a motor accident, means a form about the motor accident completed by or for the injured person.

Note If a form is approved under s 276 for a motor accident notification form, the form must be used.

70 **What is a *motor accident medical report*?**

In this Act:

motor accident medical report, for a motor accident, means a medical report prepared by a doctor about the personal injuries caused to the injured person by the motor accident.

Note If a form is approved under s 276 for a motor accident medical report, the form must be used.

71 **What are *medical expenses*?**

In this Act:

medical expenses includes hospital and pharmaceutical expenses.

Part 3.2 Early payment

72 Entitlement to early payment—injured person to give forms to insurer within 28 days

- (1) A person is entitled to payment for medical expenses under this chapter in relation to a motor accident if—
 - (a) the person is an injured person for the accident; and
 - (b) the following documents are given to the injured person’s insurer not later than 28 days after the motor accident:
 - (i) a motor accident notification form for the accident that includes a declaration by or for the person that the motor accident was not caused wholly or mainly by the fault of the person;
 - (ii) a motor accident medical report for the accident.
- (2) However, an injured person is entitled to payment for medical expenses under this chapter in relation to a motor accident only if—
 - (a) a police officer attended the motor accident; or
 - (b) the motor accident was reported to a police officer by or for the injured person.

73 What kinds of expenses must be paid by insurer?

- (1) If a person is entitled to payment for medical expenses under this chapter in relation to a motor accident, the person’s insurer is required to pay only for medical expenses that are—
 - (a) incurred within 6 months after the day the motor accident happened; and
 - (b) reasonably incurred because of the personal injury caused by the motor accident.

- (2) The insurer must make a payment for expenses under this section on presentation of an account, or receipt, for the expenses made up, and verified, as prescribed by regulation.

Note 1 Payments under this section may be recoverable under pt 4.11.

Note 2 It is a condition of a CTP insurer licence that the licensed insurer must comply with this section (see s 185).

74 Maximum amount insurer is required to pay

- (1) If a person is entitled to payment for medical expenses under this chapter in relation to a motor accident, the person's insurer must make payments for the person's medical expenses under section 73 up to—
- (a) \$5 000; or
 - (b) if a higher amount is determined by the CTP regulator—the determined amount.
- (2) The CTP regulator may determine an amount for this section.
- (3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) To remove any doubt, a person's insurer may make payments for the person's medical expenses under section 73 in addition to the amount payable under subsection (1).

75 Early payment—no effect on liability

- (1) A payment made by an insurer to a person in relation to a motor accident under this chapter—
- (a) is not an admission of liability in relation to the motor accident; and
 - (b) does not in any way prejudice or affect a claim or proceeding arising out of the motor accident.

- (2) To remove any doubt, an insurer may make a payment under this chapter in relation to a motor accident—
- (a) whether or not the insurer has accepted liability in relation to a motor accident claim arising from the accident; and
 - (b) whether or not a motor accident claim has been made against an insured person in relation to the motor accident.

Chapter 4 Motor accident claims

Part 4.1 Preliminary—ch 4

76 Definitions—ch 4

In this chapter:

complying notice of claim means a notice of claim, under section 84 (Notice of claim) or section 91 (Claimant may add later respondents), that is given as required under this part.

Note In some circumstances a claimant is taken to have given a respondent a complying notice of claim (see s 95).

compulsory conference—see section 136.

contribution notice—see section 93.

contributor, for a motor accident claim—see section 93.

court, for a motor accident claim, means—

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

insurer, for a motor accident claim—see section 81.

mandatory final offer—see section 141.

medical treatment means—

- (a) an examination, test or analysis, conducted by or under the direction, or at the request, of a doctor to diagnose an injury; or
- (b) medical or surgical treatment by a doctor; or

- (c) dental treatment by a dentist or a dental prosthetist; or
- (d) chiropractic treatment by a chiropractor; or
- (e) treatment by a psychologist; or
- (f) therapeutic treatment by a masseur, osteopath, physiotherapist, remedial kinesiologist or speech therapist; or
- (g) therapeutic treatment given on referral by a doctor or dentist; or
- (h) the taking of x-rays; or
- (i) the provision, repair or replacement of contact lenses, crutches, prostheses, spectacles or other artificial aids; or
- (j) a consultation, examination, therapeutic treatment or other service reasonably rendered in relation to a treatment mentioned in paragraph (c), (d), (f), (g), (h) or (i); or
- (k) treatment and maintenance as a patient at a hospital; or
- (l) the provision of nursing attendance, medicines, medical and surgical supplies and curative apparatus in a hospital or otherwise.

notice of claim, for a motor accident claim—see section 84.

party, for a motor accident claim, means a claimant, respondent or contributor.

response, for a motor accident claim—see section 90.

respondents' claim manager, for a motor accident claim—see section 92.

Note ***Claimant***, for a motor accident claim, is defined in s 78.
 Motor accident is defined in s 7.
 Motor accident claim is defined in s 77.
 Respondent, for a motor accident claim, is defined in s 79.

77 What is a *motor accident claim*?

In this Act:

motor accident claim, for a motor accident—

- (a) means a claim for damages for personal injury caused by the motor accident; and

Note **Motor accident** is defined in s 7.
Personal injury is defined in s 6.

- (b) includes, for a fatal injury, a claim by the dead person's dependants or estate.

78 Who is the *claimant* for a motor accident claim?

In this Act:

claimant, for a motor accident claim, means—

- (a) a person who makes, or is entitled to make, the motor accident claim; or
- (b) in relation to rehabilitation, medical treatment or loss suffered—the injured person to whom the claim relates.

79 Who is the *respondent* for a motor accident claim?

In this chapter:

respondent, for a motor accident claim—

- (a) means a person against whom a claimant makes a motor accident claim; and
- (b) includes—
 - (i) if the person mentioned in paragraph (a) is not the insurer for the motor accident claim—the insurer for the motor accident claim; and

- (ii) a later respondent.

Note 1 **Insurer**, for a motor accident claim, is defined in s 81.

Later respondent, for a motor accident claim, is defined in s 91.

Note 2 If a claimant brings a court proceeding based on a motor accident claim and the respondent is an insured person or an insurer, the claimant may need to bring the proceeding against the insured person and the insurer as joint defendants (see s 151).

80 Who is an *insured person*?

In this Act:

insured person, for a motor accident claim, means—

- (a) a CTP insured person; or
- (b) a person for whose acts and omissions the nominal defendant is liable under section 61 (Nominal defendant liable—uninsured motor vehicle).

Note **CTP insured person** is defined in s 16.

81 Who is the *insurer* for a motor accident claim?

In this chapter:

insurer, of a person, for a motor accident claim means—

- (a) if the person is a CTP insured person—the CTP insurer for the person; or
- (b) if the person is not a CTP insured person—the nominal defendant.

insurer, of a motor vehicle, for a motor accident claim means, if the motor vehicle is—

- (a) an insured motor vehicle—the CTP insurer for the motor vehicle; or
- (b) an uninsured motor vehicle—the nominal defendant; or

- (c) an unidentified motor vehicle—the nominal defendant.

82 Insured person not to admit liability, settle or make payments

- (1) An insured person must not, without the written agreement of the person's insurer—
 - (a) admit liability in relation to a motor accident claim; or
 - (b) settle, or offer to settle, a motor accident claim; or
 - (c) make a payment, or offer or promise to make a payment, in relation to a motor accident claim.
- (2) A contract, offer or promise made in contravention of this section does not bind the insurer.
- (3) This section does not prevent an insured person from providing a police officer with information reasonably required to prepare a report about a motor accident.
- (4) An insured person who contravenes this section does not incur civil liability to an insurer.

83 Power of insurer to act for insured

- (1) If a motor accident claim is made against an insured person, the person's insurer—
 - (a) must carry out the negotiations and legal proceedings related to the motor accident claim; and
 - (b) may compromise or settle the motor accident claim and legal proceedings related to the motor accident claim; and
 - (c) may act for the insured person in any other way for the motor accident 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 cannot be found, the insurer may sign for the insured person.
- (3) Nothing said or done by an insurer in relation to a motor accident claim, or legal proceedings related to a motor accident claim, is an admission of liability in, or otherwise prejudices or affects, another claim or proceedings arising out of the same circumstances.

83A Nominal defendant may deal with motor accident claim

- (1) If a motor accident claim is made against the nominal defendant, the nominal defendant may deal with the motor accident claim, and any proceeding relating to the motor accident claim, in the way the nominal defendant considers appropriate including—
 - (a) settling or compromising the motor accident claim; and
 - (b) bringing and prosecuting a proceeding under this Act for the motor accident claim and settling or compromising the proceeding.

Note The sections under which the nominal defendant may bring a proceeding include:

- s 172 (Insurer may recover costs if motor vehicle defective)
- s 173 (Insurer may recover costs if fraud)
- s 174 (Nominal defendant may recover costs from responsible person or driver)
- s 242 (Nominal defendant may recover from insolvent insurer).

- (2) The nominal defendant must give the CTP regulator the reports that the CTP regulator reasonably requires about anything done by the nominal defendant under this section.

Part 4.2 Motor accident claims procedures

Notes to pt 4.2

Costs may be awarded against a party who does not comply with this part (see s 99 and s 100).

The court may order a party to comply with a duty imposed under this part (see s 115).

84 Notice of claim

- (1) Before a claimant for a motor accident claim brings a court proceeding based on the claim against a respondent for the claim, the claimant must give the respondent written notice of the claim (the *notice of claim*).

Note 1 A proceeding must be brought before the end of the relevant limitation period under the *Limitation Act 1985*.

Note 2 If a form is approved under s 276 for a notice of claim, the form must be used.

- (2) The notice of claim must—
- (a) contain a statement of the information prescribed by regulation; and
 - (b) authorise each respondent for the motor accident claim to have access to the records and sources of information relevant to the claim that are prescribed by regulation; and
 - (c) be accompanied by any documents prescribed by regulation; and

- (d) if the claimant has not given the respondent a motor accident notification form and a motor accident medical report for the motor accident for the motor accident claim—be accompanied by a motor accident notification form and a motor accident medical report for the motor accident for the motor accident claim.

Note If the claimant has received early payment of treatment expenses under pt 3.2 the claimant will have already given the respondent the motor accident notification form and a motor accident medical report for the motor accident (see s 72).

- (3) If the claimant is a child, the claimant's parent or legal guardian may give the notice of claim for the claimant.

Note For other procedures for a claim for a personal injury suffered by a child, see the *Limitation Act 1985*, s 30A (Special provision for injuries to children).

85 Time for giving notice of claim—CTP insurer

- (1) This section applies if the insurer for a motor accident claim is the CTP insurer for the motor vehicle for the claim.
- (2) The notice of claim must be given under section 84 not later than the earlier of the following days:
- (a) the day that is 9 months after—
- (i) the day the motor accident for the motor accident claim happened; or
- (ii) if symptoms of the personal injury caused by the motor accident are not immediately apparent—the day symptoms of the personal injury first appear;
- (b) the day that is 1 month after the later of the following days:
- (i) the day the claimant first instructs a lawyer to provide advice about seeking damages for the personal injury;

- (ii) the day the respondent is identified.

Note However, the time for giving a notice of claim for a claimant with a legal disability begins on the day after the day the claimant's legal disability ends (see s 98).

- (3) If the claimant does not give the notice of claim as required in subsection (2), a reasonable excuse for the delay must be given in the notice or by separate written notice to the respondent.
- (4) Without limiting subsection (3), an excuse is reasonable if the excuse is prescribed by regulation.

Note For waiver of compliance see s 95.

86 Time for giving notice of claim—nominal defendant

- (1) This section applies if the insurer for the motor accident claim is the nominal defendant.
- (2) The notice of claim must be given under section 84 not later than 3 months after the day the motor accident for the motor accident claim happened.

Note However, the time for giving a notice of claim for a claimant with a legal disability begins on the day after the day the claimant's legal disability ends (see s 98).

- (3) If the claimant does not give the notice of claim as required in subsection (2), a reasonable excuse for the delay must be given in the notice or by separate written notice to the nominal defendant.
- (4) Without limiting subsection (3), an excuse is reasonable if the excuse is prescribed by regulation.

Note For waiver of compliance see s 95.

87 Respondent to identify and notify others

- (1) If a respondent knows of anyone else (a *relevant person*) against whom the claimant may be able to begin a proceeding based on the

motor accident claim, the respondent must, not later than 7 days after the day the respondent receives the notice of claim—

- (a) give a copy of the notice of claim to the relevant person; and
 - (b) tell the claimant in writing about the relevant person, including a short written explanation of why the respondent believes that the person may be a relevant person.
- (2) If the respondent is a child, the respondent's parent or legal guardian may comply with subsection (1) for the respondent.

88 Preliminary response to claimant

- (1) A respondent must, in writing not later than 1 month after the day the respondent receives a notice of claim under section 84—
- (a) respond to the claimant under section 90; or
 - (b) if the respondent cannot decide, on the information in the notice, whether the respondent is properly a respondent for the claim—give the claimant a written notice about the further information the respondent reasonably needs to make that decision; or
 - (c) if the respondent believes that he or she is not properly a respondent for the claim—give the claimant a written notice to that effect, indicating—
 - (i) the reasons for the belief; and
 - (ii) any information the respondent has that may help the claimant identify someone who may be a respondent for the claim.
- (2) A claimant given a written notice under subsection (1) (b) must, not later than 1 month after the day the claimant is given the notice—
- (a) give the respondent the further information indicated in the notice; or

- (b) tell the respondent, in writing, that the claimant—
 - (i) considers the respondent to be properly a respondent for the claim; and
 - (ii) requires the respondent to respond to the claimant under section 90.
- (3) Not later than 1 month after the day the respondent is given the information under subsection (2) (a), the respondent must, having regard to the information—
 - (a) respond to the claimant under section 90; or
 - (b) if the respondent believes that he or she is not properly a respondent for the claim, give the claimant a written notice to that effect, indicating—
 - (i) the reasons for the belief; and
 - (ii) any information the respondent has that may help the claimant identify someone who may be a respondent for the claim.
- (4) If the claimant is given notice under subsection (1) (c) or subsection (3) (b) that the respondent is not properly a respondent for the motor accident claim, the claimant must, not later than 1 month after the day the claimant is given the notice, tell the respondent, in writing, that the claimant—
 - (a) accepts that the respondent is not properly a respondent for the claim; or
 - (b) considers the respondent to be properly a respondent for the claim and requires the respondent to respond to the claimant under section 90.
- (5) Acknowledgement given to the respondent under subsection (4) (a) does not prevent the claimant from later giving the respondent another notice of claim under section 84.

89 Acknowledgment that proper respondent not admission of liability

- (1) This section applies if a respondent acknowledges that he or she is properly a respondent for a motor accident claim.
- (2) The respondent is not taken to have admitted liability only because of making the acknowledgment.

90 Response to notice of claim

- (1) This section applies if a respondent—
 - (a) considers the respondent to be properly a respondent for a motor accident claim; or
 - (b) is told under section 88 (2) (b) or section 88 (4) (b) (Preliminary response to claimant) that the claimant considers the respondent is properly a respondent for a motor accident claim.
- (2) The respondent must, not later than the required day, give the claimant a written notice (a *response*)—

Note **Required day**—see s (5).

- (a) stating whether the respondent is satisfied that the notice of claim is a complying notice of claim; and

Note **Complying notice of claim** is defined in s 76.

- (b) if the respondent is not satisfied that the notice of claim is a complying notice of claim—identifying the noncompliance and stating whether the respondent waives compliance; and
- (c) if the respondent does not waive compliance—allowing the claimant a reasonable period, of at least 1 month, stated in the response to—
 - (i) satisfy the respondent that the notice of claim is a complying notice of claim; or

- (ii) take reasonable action stated in the response to remedy the noncompliance; and
- (d) stating whether the insurer for the motor accident claim is prepared (without admitting liability) to meet the reasonable and appropriate costs of the claimant's rehabilitation.

Note Further provisions about rehabilitation are in pt 4.6.

- (3) If the respondent does not give a response by the required day, the respondent is conclusively presumed to be satisfied that the notice of claim is a complying notice of claim.
- (4) If subsection (2) (c) applies, the respondent must, not later than 1 month after the day the period stated in the response ends, give the claimant a written notice stating that the respondent—
 - (a) is satisfied the notice of claim is a complying notice of claim requirements, is satisfied with the action taken by the claimant to remedy the noncompliance, or waives the noncompliance; or
 - (b) is not satisfied that the claimant has taken reasonable action to remedy the noncompliance, and giving full particulars of the noncompliance and the claimant's failure to remedy it.
- (5) In this section:
required day means—
 - (a) if the respondent responds directly to the claimant under this section as mentioned in section 88 (1) (a)—the day applying under section 88 (1); and
 - (b) in any other case—the later of the following:
 - (i) if the respondent gives notice to the claimant under section 88 (3) (a)—1 month after the day the respondent is given the further information under section 88 (2) (a);

- (ii) if the claimant tells the respondent under section 88 (2) (b) or section 88 (4) (b) that the claimant considers the respondent is properly a respondent for the motor accident claim—1 month after the day the claimant tells the respondent under that paragraph.

91 Claimant may add later respondents

- (1) After a claimant has given a notice of claim to a respondent, the claimant may add someone else as a respondent for the motor accident claim (a *later respondent*) by giving the later respondent—
 - (a) the notice of claim; and
 - (b) copies of other documents given to, or received from, other respondents under this part.
- (2) However, the claimant may only add a later respondent—
 - (a) not later than the day prescribed by regulation; or
 - (b) later than the day prescribed for paragraph (a) if—
 - (i) the later respondent and all parties for the motor accident claim agree; or
 - (ii) the court gives leave.
- (3) Also, the claimant may add the nominal defendant as a later respondent in relation to a motor accident claim for a motor accident involving an unidentified motor vehicle only if the claimant has made reasonable inquiry and search for the identity of the motor vehicle.
- (4) The inquiry or search may be proved orally or by affidavit by the person who made the inquiry or search.
- (5) If the claimant adds a later respondent under this section—
 - (a) the later respondent must respond to the notice of claim as if the notice were given under section 84; and

- (b) the claimant must, in writing, tell each other respondent of the addition not later than the day prescribed by regulation.

92 Multiple respondents

- (1) If there are 2 or more respondents for a motor accident claim, 1 of the respondents (the *respondents' claim manager*) must act for all of the respondents under this chapter.
- (2) The respondents' claim manager must be decided—
 - (a) by agreement between the respondents; or
 - (b) if the respondents cannot agree within 2 months after the day the claimant first gave, or is taken to have given, a respondent for the motor accident claim a complying notice of claim—under the industry deed.

Note The circumstances in which a claimant is taken to have given a respondent a complying notice of claim are in s 95.

- (3) Until the respondents' claim manager is decided under subsection (2), the respondent to which the notice of claim is first given under section 84 is the respondents' claim manager.
- (4) The respondents' claim manager—
 - (a) may exercise the functions given under this part in relation to the motor accident claim and the claimant for all the respondents; and
 - (b) must act, as far as practicable, with the agreement of all the respondents.
- (5) Action taken, or an agreement made, by the respondents' claim manager in relation to the motor accident claim is binding on each respondent as far as it affects the claimant.
- (6) However, if the respondents' claim manager acts beyond the scope of the manager's authority, the manager is liable to each other respondent for any loss suffered by the other respondent.

93 Respondent may add contributor

- (1) A respondent who receives a complying notice of claim may, not later than the day prescribed by regulation, add someone else as a contributor (the *contributor*) for the motor accident claim by giving the person a written notice (a *contribution notice*)—
 - (a) claiming an indemnity from, or contribution towards, the respondent's liability; and
 - (b) stating the grounds on which the respondent holds the person liable; and
 - (c) stating any other information prescribed by regulation; and
 - (d) accompanied by copies of documents about the motor accident claim given to, or received from, other parties under this chapter.
- (2) However, the respondent may add a contributor after the day prescribed under subsection (1) only if—
 - (a) the contributor and all parties for the motor accident claim agree; or
 - (b) the court gives leave.
- (3) Also, if the respondent proposes to add the nominal defendant as a contributor because the motor accident for the motor accident claim involved an unidentified motor vehicle, the respondent may add the nominal defendant only if the respondent has made reasonable inquiry and search for the identity of the motor vehicle.
- (4) The inquiry or search may be proved orally or by affidavit of the person who made the inquiry or search.
- (5) If the respondent adds a contributor under this section, the respondent must give a copy of the contribution notice to each other party not later than the day prescribed by regulation.

94 Contributor's response

- (1) A contributor must, not later than 1 month after the day the contributor receives a contribution notice, give the respondent who gave the contribution notice a written response (the *contributor's response*)—
 - (a) containing a statement of the information prescribed by regulation; and
 - (b) accompanied by the documents (if any) prescribed by regulation.
- (2) The contributor's response must also state—
 - (a) whether the claim for the contribution or indemnity claimed in the contribution notice is admitted, denied or admitted in part; and
 - (b) if the claim for the contribution or indemnity is admitted in part—the extent to which the claim is admitted.
- (3) An admission of liability in the contributor's response is not binding on the contributor—
 - (a) for another claim; or
 - (b) at all if it later appears the admission was induced by fraud.
- (4) If the respondent requires information provided by a contributor under this section to be verified by statutory declaration, the contributor must verify the information by statutory declaration.

95 Noncomplying notice of claim may be complying notice of claim

- (1) This section applies if the claimant for a motor accident claim gives a respondent for the claim a notice of claim that is not a complying notice of claim.

Note *Complying notice of claim* is defined in s 76.

- (2) The claimant is taken to have given the respondent a complying notice of claim if—
- (a) the respondent has told the claimant, in writing—
 - (i) under section 90 (2) (a) or section 90 (4) (a) (Response to notice of claim), that the respondent is satisfied that the notice of claim is a complying notice of claim; or
 - (ii) under section 90 (2) (b) or section 90 (4) (a) that the respondent waives any noncompliance; or
 - (iii) under section 90 (4) (a), that the respondent is satisfied with the action the claimant has taken to remedy the noncompliance; or
 - (b) the respondent has not responded to the claimant as required and is conclusively presumed, under section 90 (3), to be satisfied the notice is a complying notice of claim; or
 - (c) the court, by order, on application by the claimant—
 - (i) declares that the claimant has remedied the noncompliance; or
 - (ii) authorises the claimant to proceed further with the motor accident claim despite the noncompliance.
- (3) However, if the noncompliance is failure to give the notice of claim in accordance with section 85 (Time for giving notice of claim—CTP insurer) or section 86 (Time for giving notice of claim—nominal defendant), the court may authorise the claimant to proceed under subsection (2) (c) (ii) only if it is in the interests of justice for the matter to proceed further.
- (4) An order of the court under subsection (2) (c) may be made on the conditions that the court considers necessary or appropriate to minimise prejudice to a respondent because of the claimant's noncompliance.

- (5) The claimant is taken to have given, and the respondent is taken to have received, the complying notice of claim, on the day—
- (a) for subsection (2) (a)—the respondent tells the claimant, in writing; or
 - (b) for subsection (2) (b)—that is the required day under section 90 for the presumption; or
 - (c) for subsection (2) (c)—the court makes the declaration or gives the authorisation.

96 Claimant not to proceed without complying notice of claim

- (1) This section applies if the claimant for a motor accident claim—
- (a) does not give the respondent for the motor accident claim a complying notice of claim; or
 - (b) is not taken to have given the respondent for the motor accident claim a complying notice of claim.

Note The circumstances in which a claimant is taken to have given a respondent a complying notice of claim are in s 95.

- (2) The claimant cannot proceed with the motor accident claim.

97 Respondent to try to resolve motor accident claim

- (1) A respondent must, not later than 6 months after the day the respondent receives, or is taken to have received, a complying notice of claim for a motor accident claim—
- (a) take any reasonable steps necessary to find out about the motor accident for the motor accident claim; and
 - (b) tell the claimant, in writing—
 - (i) whether liability is admitted or denied; and

- (ii) if contributory negligence is claimed—the degree of the contributory negligence expressed as a percentage; and
 - (c) if the claimant—
 - (i) made an offer of settlement in the notice of claim—tell the claimant whether the respondent accepts or rejects the offer; or
 - (ii) did not make an offer of settlement in the notice of claim—invite the claimant to make a written offer of settlement; and
 - (d) make a fair and reasonable estimate of the damages to which the claimant would be entitled in a proceeding for the motor accident claim against the respondent; and
 - (e) either—
 - (i) make a written offer, or counteroffer, of settlement to the claimant setting out in detail the basis on which the offer, or counteroffer, is made; or
 - (ii) settle the motor accident claim by accepting an offer made by the claimant.
- (2) An offer, or counteroffer, of settlement must be accompanied by a copy of medical reports, assessments of cognitive, functional or vocational capacity and all other material, including documents relevant to assessing economic loss, in the offerer's possession or control that may help the person to whom the offer is made make a proper assessment of the offer.
- (3) A respondent or claimant to whom a written offer, or counteroffer, of settlement is made must, unless a response to the offer is to be made under subsection (1) (c), respond in writing to the offer not later than 3 months after the day the respondent or claimant receives the offer, indicating acceptance or rejection of the offer.

- (4) An admission of liability by a respondent under this section is not binding on the respondent—
- (a) in relation to another claim; and
 - (b) at all if it later appears the admission was induced by fraud.

Note 1 A respondent may be obliged to make early payments for an injured person's medical expenses whether or not liability is admitted for the motor accident claim (see ch 3).

Note 2 If a respondent admits liability for a motor accident claim, the respondent may be obliged to pay for the injured person's medical expenses and rehabilitation services (see pt 4.6).

98 Time limit exception—legal disabilities

- (1) A claimant is not required to comply with an obligation under this chapter while the claimant is under a legal disability.

Note If the claimant is a child, under s 84 (3) a parent or guardian of the child may give the notice of claim for the child.

- (2) However, the period not later than which the obligation must be complied with begins when the claimant's legal disability ends.
- (3) This chapter applies to the claimant as if—
- (a) a reference to the day the motor accident for the motor accident claim happened were a reference to the day the claimant's legal disability ends; and
 - (b) all other changes were made to give effect to this section.
- (4) This section does not prevent a claimant, or a person acting for a claimant, from complying with an obligation under this part while the claimant is under a legal disability.

(5) In this section:

legal disability—a claimant is under a **legal disability** in the circumstances in which a person is under a disability for the *Limitation Act 1985*.

Note The *Limitation Act 1985*, dict, defines **under a disability**—a person is **under a disability**—

- (a) while the person is under 18 years old; or
- (b) while the person is, for a continuous period of 28 days or longer, incapable of, or substantially impeded in, the management of his or her affairs in relation to the cause of proceeding in relation to the limitation period for which the question of disability arises because of—
 - (i) intellectual retardation or disability, mental illness or disorder, brain damage, senility or physical disability; or
 - (ii) war or warlike operations; or
 - (iii) circumstances arising out of war or warlike operations.

99 Costs awarded if noncompliance with pt 4.2—claimant

If a claimant does not comply with the requirements of this part, a court in which the claimant begins a proceeding based on the motor accident claim—

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

100 Costs awarded if noncompliance with pt 4.2—respondent

If a respondent does not comply with the requirements of this part, a court in which the respondent defends a proceeding based on the motor accident claim may, on a claimant's application in the

proceeding, award in the claimant's favour costs (including legal and investigation costs) reasonably incurred by the claimant because of the respondent's noncompliance.

Part 4.3 Obligations to give documents and information

Note to pt 4.3

The court may order a party to comply with a duty imposed under this part (see s 115).

101 Purpose—pt 4.3

The purpose of this part is to put the parties for a motor accident claim in a position where they have enough information to assess liability and quantum for the motor accident claim.

102 What is a *required document*?

In this part:

required document—each of the following is a *required document* for a motor accident claim:

- (a) a report, or other document, about the motor accident for the motor accident claim;
- (b) a report about the claimant's medical condition or prospects of rehabilitation;
- (c) a report about the claimant's cognitive, functional or vocational capacity.

103 What is *relevant claim information*?

In this part:

relevant claim information, for a motor accident claim, means information about the following things:

- (a) the nature of the personal injury caused by the motor accident and any consequent disabilities;

- (b) any medical treatment and rehabilitation services the claimant has sought or obtained for the personal injury;
- (c) the claimant's medical history, to the extent that it is relevant to the motor accident claim;
- (d) any other claims for damages for personal injury made by the claimant;
- (e) the claimant's claim for past and future economic loss;
- (f) any claim for gratuitous services consequent on the claimant's personal injury.

104 Claimant to give documents and information to respondent

- (1) A claimant for a motor accident claim must give a respondent for the motor accident claim—
 - (a) a copy of each required document that is in the claimant's possession; and
 - (b) if the respondent asks the claimant for the following information—the following information:
 - (i) the circumstances of, or the reasons for, the motor accident for the motor accident claim;
 - (ii) relevant claim information.
- (2) The claimant must give the copies mentioned in subsection (1) (a) to the respondent—
 - (a) not later than 1 month after the day the claimant gave, or is taken to have given, the respondent a complying notice of claim; or
 - (b) if a required document comes into the claimant's possession later—not later than 7 days after the day the required document comes into the claimant's possession.

- (3) The claimant must respond to a request under subsection (1) (b) not later than 1 month after the day the claimant receives the request.
- (4) If a respondent requires information given by a claimant under this section to be verified by statutory declaration, the claimant must verify the information by statutory declaration.
- (5) If a claimant fails, without reasonable excuse, to comply fully with this section, the claimant is liable for costs to the respondent resulting from the failure.

Note The claimant may not need to give a document or information under this section if the document or information is protected by client legal privilege (see s 109).

105 Respondent to give documents and information to claimant

- (1) A respondent for a motor accident claim must give the claimant for the motor accident claim—
 - (a) a copy of each required document that is—
 - (i) in the respondent's possession; and
 - (ii) directly relevant to a matter in issue in the motor accident claim; and
 - (b) if the claimant asks the respondent for any of the following information—the following information:
 - (i) if the information is in the respondent's possession—the circumstances of, or the reasons for, the motor accident for the motor accident claim; or
 - (ii) if the respondent is the insurer for the motor accident claim—information that can be found out from the insured person about the circumstances of, or the reasons for, the motor accident for the motor accident claim.

- (2) The respondent must give the copies mentioned in subsection (1) (a)—
 - (a) not later than 1 month after the day the respondent received, or is taken to have received, the claimant's complying notice of claim; or
 - (b) if a required document comes into the respondent's possession later—not later than 7 days after the day the required document comes into the respondent's possession.
- (3) The respondent must respond to a request under subsection (1) (b) not later than 1 month after the day the respondent receives the request.
- (4) If a claimant requires information given by a respondent under this section to be verified by statutory declaration, the respondent must verify the information by statutory declaration.
- (5) If a respondent fails, without proper reason, to comply fully with this section, the respondent is liable for costs to the claimant resulting from the failure.

Note 1 Section 108 applies if there would be more than 200 pages of copies.

Note 2 The respondent may not need to give a document or information under this section if the document or information is protected by client legal privilege (see s 109).

Note 3 The respondent may not need to give a document or information under this section if the respondent suspects the claimant of fraud (see s 111).

106 Respondent to give documents and information to contributor

- (1) A respondent for a motor accident claim must give a contributor added by the respondent a copy of—
 - (a) each required document that is in the respondent's possession; and

(b) any relevant claim information that is in the respondent's possession.

(2) The respondent must give the copies—

(a) not later than 1 month after the day the respondent gives a contribution notice to the contributor; or

Note The respondent gives the contributor a contribution notice under s 93.

(b) if a required document or relevant claim information comes into the respondent's possession later—not later than 7 days after the day the document or information comes into the respondent's possession.

Note 1 Section 108 applies if there would be more than 200 pages of copies.

Note 2 The respondent may not need to give a document or information under this section if the document or information is protected by client legal privilege (see s 109).

107 Contributor to give documents to respondent

(1) A contributor added by a respondent for a motor accident claim must give the respondent a copy of each required document that is in the contributor's possession.

(2) The contributor must give the copies—

(a) not later than 1 month after the day the contributor is added as a contributor; or

(b) if a required document comes into the respondent's possession later—not later than 7 days after the day the required document comes into the respondent's possession.

Note 1 Section 108 applies if there would be more than 200 pages of copies.

Note 2 The contributor may not need to give a document or information under this section if the document or information is protected by client legal privilege (see s 109).

108 Alternative provision if more than 200 pages

- (1) In this section:
relevant section means any of the following sections:
 - (a) section 105 (Respondent to give documents and information to claimant);
 - (b) section 106 (Respondent to give documents and information to contributor);
 - (c) section 107 (Contributor to give documents to respondent).
- (2) This section applies if—
 - (a) a relevant section requires a person (the *disclosing person*) to give copies of reports or other documents or information (*relevant material*) to someone else; and
 - (b) the total number of pages of the copies exceeds 200 pages.
- (3) Not later than the day the disclosing person would, apart from this section, be required to give relevant material to someone else under the relevant section, the disclosing person need only offer the other person a reasonable opportunity to inspect the material.
- (4) If the other person, whether on inspection or otherwise, by written notice given to the disclosing person, requires the disclosing person to give the other person copies of some or all of the relevant material, the disclosing person must comply with the requirement not later than—
 - (a) if the total number of pages does not exceed 200—1 month after the day the requirement is made; or

- (b) in any other case—1 month after the day the other person pays 50 cents for each page by which the total number of pages exceeds 200 pages.

Note If, under a provision of an Act or statutory instrument, an act must be done, the obligation to do the act continues until it is done (see Legislation Act, s 152).

109 Exception to obligation—client legal privilege

- (1) A party is not obliged to give a document or information to another party under this part if the document or information is protected by client legal privilege.
- (2) However, an investigative report, medical report or report relevant to the claimant's rehabilitation must be given even though otherwise protected by client legal privilege.
- (3) A regulation may prescribe exceptions to subsection (2).
- (4) If a report mentioned in subsection (2) must be given, the report may be given with the omission of passages containing only statements of opinion.
- (5) In this section:

investigative reports does not include a document prepared for an application for, an opinion on or a decision about indemnity against the motor accident claim from the Territory.

110 Exception to obligation—party already has documents or information

A party is not obliged to give a document or information to another party under this part if the document or information is already in the other party's possession.

111 Exception to obligation—party suspects fraud

- (1) If a party has reasonable grounds to suspect another party of fraud, the party may apply to the court for approval to withhold from disclosure under this part documents or information that—
 - (a) would alert the other party to the suspicion; or
 - (b) could help further the fraud.
- (2) The application may be made without notice to the other party.
- (3) If the court gives approval on application under subsection (1), the party may withhold from disclosure the documents or information in accordance with the approval.

112 Offence—failure to give document or information

A person commits an offence if the person—

- (a) is a party for a motor accident claim; and
- (b) is obliged to give a document or information under this part; and
- (c) does not give the document or information in the way required under this part.

Maximum penalty: 100 penalty units.

Note 1 Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

Note 2 This section does not apply if—

- the person is not obliged to give the document or information under s 109 or s 110; or
- under s 111, the court has given approval for the party to withhold from disclosure the documents or information.

113 Consequences of failure to give document

- (1) This section applies if a party for a motor accident claim fails to comply with a provision of this part requiring the party to disclose a document or information to another party.
- (2) The document or information cannot be used by the party in a later court proceeding based on the motor accident claim, or the deciding of the claim, unless the court orders otherwise.
- (3) If the document or information comes to the other party's knowledge, the document or information may be used by the other party.

114 Privilege generally for documents and information

The documents and information given under this part are protected by the same privileges as if disclosed in a proceeding in the Supreme Court.

Part 4.4 Enforcement of pt 4.2 and pt 4.3

Notes to pt 4.4

In addition to this part, costs may be awarded against a party who does not comply with pt 4.2 (see s 99 and s 100).

In addition to this part, if a claimant fails to comply with s 104, the claimant may be liable for costs to the respondent.

In addition to this part, if a respondent fails to comply with s 105, the respondent may be liable for costs to the claimant.

115 Court's power to enforce compliance with pt 4.2 and pt 4.3

- (1) This section applies if a party (the *first party*) fails to comply with a duty imposed under—
 - (a) part 4.2 (Motor accident claims procedures); or
 - (b) part 4.3 (Obligations to give documents and information).
- (2) The court may, on the application of a party to whom the duty is owed, order the first party to take stated action to remedy the noncompliance not later than a day stated by the court.
- (3) The court may make consequential or ancillary orders, including orders about costs.

116 Offence—false or misleading statements

- (1) A person commits an offence if—
 - (a) the person makes a statement in a notice, response or other document given under—
 - (i) part 4.2 (Motor accident claims procedures); or
 - (ii) part 4.3 (Obligations on parties to give documents and information); and

- (b) the person does so knowing that the statement—
 - (i) is false or misleading in a material particular; or
 - (ii) omits anything without which the statement is misleading in a material particular.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

- (2) A person commits an offence if—
 - (a) the person makes a statement in a notice, response or other document given under this part; and
 - (b) the person is reckless about whether the statement—
 - (i) is false or misleading in a material particular; or
 - (ii) omits anything without which the statement is misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

Part 4.5 Expert reports

117 Panel of recognised medical experts

- (1) The CTP regulator—
 - (a) may establish a panel of experts for reporting on the medical condition of claimants and their prospects of rehabilitation; and
 - (b) must revise the membership of the panel at least once every 3 years by adding to, or removing, the names of the experts who constitute the panel.
- (2) In deciding on the composition of the panel, the CTP regulator—
 - (a) must consult with each professional body—
 - (i) prescribed by regulation; and
 - (ii) in the way prescribed by regulation; and
 - (b) may only include an expert on the panel if—
 - (i) the expert's inclusion is endorsed by each relevant professional body; or
 - (ii) the CTP regulator is satisfied there is good reason for inclusion of the expert on the panel despite the absence of endorsement by each relevant professional body.

118 Parties may jointly arrange for expert report

- (1) The parties for a motor accident claim may jointly arrange for an expert report about 1 or more of the following:
 - (a) the cause, or probable cause, of the motor accident for the motor accident claim and whether, in the expert's opinion, 1 or more people (who may be named) are responsible for, or contributed to, the motor accident;

- (b) the cause, or probable cause, of the injured person's personal injury for the motor accident claim and whether, in the expert's opinion, 1 or more people (who may be named) are responsible for, or contributed to, the motor accident;
 - (c) the injured person's medical condition or prospects of rehabilitation;
 - (d) the injured person's cognitive, functional or vocational capacity.
- (2) A party is not under an obligation to agree to a proposal to obtain a report under this section.
 - (3) The person from whom an expert report is obtained must be a person, agreed to by the parties, with appropriate qualifications and experience in the subject area of the report.
 - (4) The person preparing the expert report must give the parties a copy of the report.

119 Cost of expert report obtained by agreement

- (1) If an expert report is obtained by agreement between a respondent and a claimant and the claimant is liable for the cost of obtaining the report, the respondent 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 any agreement between the claimant and the respondent.

120 Examination by expert if no agreement

- (1) This section applies if a respondent wants to obtain an expert report about 1 or more of the matters mentioned in section 118 (1) (Parties may jointly arrange for expert report) but fails to obtain the claimant's agreement.

- (2) The claimant must comply with a request by the respondent to undergo, at the respondent's expense, either or both of the following:
 - (a) a medical examination by a doctor to be selected by the claimant from a panel of at least 3 doctors with appropriate qualifications and experience in the relevant field nominated by the respondent in the request;
 - (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 in the relevant field nominated by the respondent in the request.
- (3) However, a claimant is not obliged to undergo an examination or assessment under this section if the examination or assessment is unreasonable or unnecessarily repetitious.
- (4) If 3 doctors or experts with appropriate qualifications and experience in the relevant field are not available for inclusion on a panel under subsection (2), the number on the panel may be reduced to 2.

Part 4.6 Respondent to pay for medical expenses and rehabilitation services

Division 4.6.1 Medical expenses

121 Preconditions to payment of medical expenses

A claimant for a motor accident claim is entitled to payment for medical expenses under this division only if—

- (a) the respondent for the motor accident claim admits liability for the motor accident claim; and
- (b) either—
 - (i) a police officer attended the motor accident for the motor accident claim; or
 - (ii) the motor accident was officially reported to a police officer by or for the injured person.

122 Respondent to pay injured person's medical expenses

- (1) The respondent must pay—
 - (a) the injured person's medical expenses that are reasonably incurred because of the personal injury caused by the motor accident for the motor accident claim; or
 - (b) a proportion of the medical expenses reflecting the extent of the respondent's responsibility (assuming the claimant to be guilty of contributory negligence as asserted by the respondent).

- (2) The respondent must make a payment under this section on presentation of an account made up, and verified, as prescribed by regulation.
- (3) This section does not apply to any expenses already paid for the injured person under section 73 (What kinds of expenses must be paid by insurer?).

Note 1 Payments under this section may be recoverable under part 4.11.

Note 2 It is a condition of a CTP insurer licence that the licensed insurer must comply with this section (see s 185).

Division 4.6.2 Rehabilitation services

123 What is *rehabilitation*?

In this chapter:

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; or
- (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.

124 What are *rehabilitation services*?

In this Act:

rehabilitation services means services for providing rehabilitation to a person.

125 What are *provided rehabilitation services*?

In this division:

provided rehabilitation services means rehabilitation services made available by a respondent to a claimant under section 126 or section 127.

126 Respondent may make rehabilitation services available

- (1) A respondent may make rehabilitation services available to a claimant on the respondent's own initiative or at the claimant's request.
- (2) If a respondent makes rehabilitation services available to a claimant before admitting or denying liability for a motor accident claim, the respondent must not be taken, for that reason, to have admitted liability.

127 Respondent to make rehabilitation services available

- (1) This section applies if a respondent—
 - (a) admits liability for a motor accident claim; or
 - (b) agrees to pay for rehabilitation services without admitting liability.

Note The respondent must tell the claimant in the response to the notice of claim whether the respondent is prepared to meet the reasonable and appropriate cost of the claimant's rehabilitation (without admitting liability) (see s 90).

- (2) The respondent must, at the claimant's request, ensure that reasonable and appropriate rehabilitation services are made available to the claimant.

Note It is a condition of a CTP insurer licence that the licensed insurer must comply with this section (see s 185).

128 Respondent to give assessment of damages notice

- (1) This section applies if a respondent intends to—
 - (a) make rehabilitation services available to a claimant under section 126 or section 127.
 - (b) ask the court to take the cost of rehabilitation services into account in the assessment of damages.
- (2) The respondent must, before providing the rehabilitation services, give the claimant, written notice (an *assessment of damages notice*) that includes—
 - (a) an estimate of the cost of the rehabilitation services; and
 - (b) a statement explaining how, and to what extent, the assessment of damages is likely to be affected by the provision of the rehabilitation services.

129 Cost of services and assessment of damages

- (1) The cost to the respondent of providing the rehabilitation services may be taken into account in the assessment of damages for the motor accident claim only if the respondent has given the claimant an assessment of damages notice under section 128.
- (2) 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 personal injury caused by the motor 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.

130 Reasonable and appropriate services—mediation

- (1) If the claimant is not satisfied that provided rehabilitation services are reasonable and appropriate, the claimant may apply to the CTP regulator to appoint a mediator to help resolve the questions between the claimant and respondent.
- (2) An application for appointment of a mediator must—
 - (a) be made in writing; and
 - (b) give details of any attempts made by the claimant to resolve the matter in dispute.
- (3) The fees and expenses of the mediator must be paid as agreed between the parties or, if there is no agreement, by the parties in equal proportions.

131 Reasonable and appropriate services—court proceeding

- (1) If the claimant is not satisfied that provided rehabilitation services are reasonable and appropriate, the claimant may apply to the court to decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate.
- (2) An application may be made to the court whether or not there has been an earlier attempt to resolve the questions between the claimant and the respondent by mediation.
- (3) On application, the court may decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate and make consequential orders and directions.

132 Respondent to pay for rehabilitation services

The respondent must bear (or reimburse) the cost of provided rehabilitation services unless the respondent's liability is reduced—

- (a) by agreement with the claimant; or

- (b) by order of the court under section 134 (Cost of rehabilitation services—court proceeding).

Note 1 Costs paid under this section may be recoverable under part 4.11.

Note 2 It is a condition of a CTP insurer licence that the licensed insurer must comply with this section (see s 185).

133 Cost of rehabilitation services—mediation

- (1) If the respondent considers that the cost of provided rehabilitation services is unreasonable, the respondent may apply to the CTP regulator to appoint a mediator to help resolve the questions between the claimant and the respondent.
- (2) An application for appointment of a mediator must—
 - (a) be made in writing; and
 - (b) give details of any attempts made by the claimant to resolve the matter in dispute.
- (3) The fees and expenses of the mediator must be paid as agreed between the parties or, if there is no agreement, by the parties in equal proportions.

134 Cost of rehabilitation services—court proceeding

- (1) If the respondent considers that the cost of provided rehabilitation services is unreasonable, the respondent may apply to the court to decide—
 - (a) what rehabilitation services are, in the circumstances of the case, reasonable and appropriate; or
 - (b) to what extent the respondent should contribute to the cost of rehabilitation services.
- (2) A respondent may apply to the court whether or not there has been an earlier attempt to resolve the questions between the respondent and the claimant by mediation.

- (3) On application, the court may decide the questions raised on the application and make consequential orders and directions.

Division 4.6.3 Medical and rehabilitation guidelines

135 CTP regulator may make medical and rehabilitation guidelines

- (1) The CTP regulator may make guidelines (*medical and rehabilitation guidelines*) for the following:
- (a) the medical treatment of injured people;
 - (b) the provision of rehabilitation services for injured people (including the circumstances in which rehabilitation services must be provided);
 - (c) the assessment of the degree of permanent impairment of an injured person as a result of an personal injury caused by a motor accident.

Note It is a condition of a CTP insurer licence that the licensed insurer must comply with this the medical and rehabilitation guidelines (see s 185).

- (2) A medical and rehabilitation guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (3) Medical and rehabilitation guidelines—

- (a) must not be construed as requiring medical treatment to be carried out in accordance with medical and rehabilitation guidelines; and
- (b) must be consistent with a high standard of medical care, dental care, rehabilitation, aftercare and continuing care as exists in the community at that time.

- (4) Medical and rehabilitation guidelines must be developed in consultation with—
- (a) relevant medical colleges including the following:
 - (i) the Royal Australasian College of Physicians;
 - (ii) the Royal Australasian College of Surgeons;
 - (iii) the Royal Australian College of General Practitioners;
 - (iv) the Australian Orthopaedic Association; and
 - (b) other relevant colleges and associations including the paramedical professional associations; and
 - (c) anyone else prescribed by regulation.

Part 4.7 Compulsory conferences before court proceedings

136 Compulsory conference

- (1) Before a claimant for a motor accident claim brings a court proceeding based on the motor accident claim, the parties for the motor accident claim must have a conference (the *compulsory conference*).
- (2) Any party may call the compulsory conference—
 - (a) at a time and place agreed by each party; or
 - (b) if more than 6 months has passed since the respondent received, or is taken to have received, the claimant's complying notice of claim—at a reasonable time and place nominated by the party calling the conference.

Note The circumstances in which a claimant is taken to have given a respondent a complying notice of claim are in s 95.
- (3) On application by a party, the court may decide the time and place for the compulsory conference and make any other orders the court considers appropriate in the circumstances.
- (4) 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.
- (5) 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.

137 Compulsory conference may be dispensed with

- (1) On application by 1 or more of the parties for the motor accident claim, the court may dispense with the compulsory conference for good reason and make any other orders the court considers appropriate in the circumstances.
- (2) 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 for the motor accident claim.

138 Compulsory conference mediator

- (1) A compulsory conference may be held with a mediator if—
 - (a) each party for the motor accident claim agrees; and
 - (b) each party for the motor accident claim agrees, in writing, about how costs of the mediation are to be apportioned between the parties.
- (2) The mediator must be a person who is independent of the parties.
- (3) The mediator must be decided by agreement by each party for the motor accident claim.
- (4) However, if the parties are unable to agree on a mediator not later than 30 days after the date for the compulsory conference is decided, any party for the motor accident claim may apply to the registrar of the court for the registrar to decide the mediator.

139 Procedures before compulsory conference

- (1) At least 7 days before the compulsory conference is to be held, each party for the motor accident claim must give each other party for the motor accident claim the following:
 - (a) a copy of each document that is relevant to the motor accident claim that has not yet been given to the other party;

- (b) a statement verifying that all relevant documents in the possession of the party or the party's lawyer have been given as required;
 - (c) details of the party's legal representation;
 - (d) if the party has legal representation—a certificate of readiness signed by the party's lawyer.
- (2) However, on application by a party, the court may exempt the party from an obligation to give material to another party before trial if satisfied that—
- (a) giving the material would alert a person reasonably suspected of fraud to the suspicion; or
 - (b) there is some other good reason why the material should not be given.
- (3) In this section:
- certificate of readiness***, by a party to a motor accident claim, means a certificate stating that—
- (a) the party is in all respects ready for—
 - (i) the compulsory conference; and
 - (ii) the trial; and
 - (b) the party has obtained all investigative material required for the trial including witness statements from each person (other than expert witnesses) the party intends to call as a witness at the trial; and
 - (c) the party has obtained medical or other expert reports from each person the party proposes to call as an expert witness at the trial; and
 - (d) the party has fully complied with the party's obligations to give the other parties material relevant to the motor accident claim; and

(e) the party's lawyer has given the party a costs statement.

costs statement, by a party's lawyer, means a statement containing—

- (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 motor accident claim proceeds to trial and is decided 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 respondent's mandatory final offer;
 - (iii) if the amount of the damages awarded by the court is equal to, or less than, the respondent's mandatory final offer.

Note **Mandatory final offers** are dealt with in pt 4.8.

140 Attendance and participation at compulsory conference

- (1) Each conference participant must, unless the conference participant has a reasonable excuse—
 - (a) attend the compulsory conference; and
 - (b) actively take part in an attempt to settle the motor accident claim.

(2) In this section:

conference participant means—

- (a) the claimant or the claimant's guardian; and
- (b) a person authorised by a respondent or contributor to settle the motor accident claim on the respondent's or contributor's behalf.

Part 4.8 Mandatory final offers

141 Mandatory final offers

- (1) This section applies if, for a motor accident claim—
 - (a) the compulsory conference has been dispensed with under section 137 (Compulsory conference may be dispensed with); or
 - (b) the motor accident claim is not settled at the compulsory conference.
- (2) The claimant and the respondent for the motor accident claim must exchange written final offers (each of which is a *mandatory final offers*).
- (3) However, if a respondent denies liability altogether, the respondent must give the claimant a written notice of denial (a *mandatory final notice*).
- (4) If the respondent gives the claimant a mandatory final notice, for this Act, the respondent is taken to have given the claimant a mandatory final offer of \$0.
- (5) A mandatory final offer must identify how much of the offer is for pain and suffering.

Note 1 If a form is approved under s 276 for a mandatory final offer or a mandatory final notice, the form must be used.

Note 2 A mandatory final offer for \$50 000 or less must be exclusive of any amount for costs (see s 144 (1)).

142 Mandatory final offers may be dispensed with

The court may, on application by the claimant or the respondent for the motor accident claim, dispense with the obligation to exchange mandatory final offers.

143 Timing of mandatory final offers

- (1) If the court has not dispensed with the obligation to exchange mandatory final offers, mandatory final offers for a motor accident claim must be exchanged—
 - (a) if the compulsory conference has been dispensed with—not later than 14 days after the day the conference was dispensed with; or

Note A compulsory conference may be dispensed with by agreement or by court order (see s 137).
 - (b) if the claim is not settled at the compulsory conference—at the end of the conference.
- (2) A mandatory final offer remains open for 14 days.

144 Working out costs for mandatory final offers

- (1) A mandatory final offer for \$50 000 or less must be exclusive of any amount for costs.
- (2) If a mandatory final offer is for \$50 000 or less but for more than \$30 000, and is accepted, costs must be worked out and paid in the way prescribed by regulation.
- (3) If a mandatory final offer is for \$30 000 or less, and is accepted, costs must be \$0.

145 Court proceedings not to begin if mandatory final offer open

- (1) A claimant for a motor accident claim must not begin a court proceeding based on the claim if a mandatory final offer for the claim remains open.

Note A mandatory final offer remains open for 14 days (see s 143).
- (2) If a claimant brings a court proceeding based on a motor accident claim, the claimant must, at the beginning of the proceeding, file in

the court a sealed envelope containing a copy of the claimant's mandatory final offer.

- (3) The respondent must, before or at the time of filing a defence, file in the court a sealed envelope containing a copy of the respondent's mandatory final offer.
- (4) The court must not read the mandatory final offers until the court has decided the claim.
- (5) However, the court must have regard to the mandatory final offers if making a decision about costs.

Part 4.9 Court proceedings

146 Time limit for beginning proceeding

- (1) This section applies if a claimant for a motor accident claim does not begin a court proceeding based on the motor accident claim in accordance with the time limits in the following sections:
 - (a) section 147 (Time limit—compulsory conference);
 - (b) section 148 (Time limit—no compulsory conference);
 - (c) section 149 (Time limit—no mandatory final offers).
- (2) The claimant may still begin the proceeding but the court may order the claimant to pay the respondent's costs caused by the delay.
- (3) The respondent may apply to the court for an order deciding a time by which the claimant must begin the proceeding.
- (4) If the claimant does not begin a proceeding in accordance with a court order made on application under subsection (3), the motor accident claim is barred.

147 Time limit—compulsory conference

- (1) This section applies if—
 - (a) the parties to a motor accident claim have had a compulsory conference; and
 - (b) the obligation to exchange mandatory final offers has not been dispensed with.

Note A court may dispense with the obligation to exchange mandatory final offers under s 142.

- (2) The claimant may only begin a court proceeding based on the motor accident claim not later than—
 - (a) 60 days after the end of the compulsory conference; or

- (b) a later day—
 - (i) agreed by the parties not later than 60 days after the end of the compulsory conference; or
 - (ii) decided by the court on application by the claimant not later than 60 days after the end of the compulsory conference.

Note The claimant may still be able to begin a court proceeding based on the motor accident claim under s 146.

148 Time limit—no compulsory conference

- (1) This section applies if—
 - (a) the compulsory conference for the parties to a motor accident claim has been dispensed with; but
 - (b) the obligation to exchange mandatory final offers has not been dispensed with.

Note 1 A compulsory conference may be dispensed with by agreement or by court order (see s 137).

Note 2 A court may dispense with the obligation to exchange mandatory final offers (see s 142).

- (2) The claimant may only begin a court proceeding based on the motor accident claim not later than—
 - (a) the due date; or
 - (b) a later day—
 - (i) agreed by the parties not later than the due date; or
 - (ii) decided by the court on application by the claimant not later than the due date.

Note The claimant may still be able to begin a court proceeding based on the motor accident claim under s 146.

- (3) In this section:

due date means the day 60 days after the later of the following:

- (a) 6 months after the respondent received, or is taken to have received, the claimant's complying notice of claim;

Note The circumstances in which a claimant is taken to have given a respondent a complying notice of claim are in s 95.

- (b) the day the compulsory conference was dispensed with.

Note A compulsory conference may be dispensed with by agreement or by court order (see s 137).

149 Time limit—no mandatory final offers

- (1) This section applies if a court dispenses with the obligation to exchange mandatory final offers.

Note A court may dispense with the obligation under s 142.

- (2) A claimant may only begin a court proceeding based on the motor accident claim not later than the day decided by the court when, or after, the court dispenses with the obligation.

Note The claimant may still be able to begin a court proceeding based on the motor accident claim under s 146.

150 Need for urgent proceeding

- (1) The court, on application by a claimant, may give leave to the claimant to begin a proceeding in the court based on a motor accident claim despite noncompliance with this part if satisfied there is an urgent need to begin the proceeding.
- (2) The order giving leave may be made on conditions the court considers appropriate having regard to the circumstances of the case.
- (3) If leave is given, the proceeding started by leave is stayed until the claimant complies with this part or the proceeding is discontinued or otherwise ends.

- (4) However, the proceeding is not stayed if—
- (a) the court is satisfied that—
 - (i) the claimant is suffering from a terminal condition; and
 - (ii) the trial of the proceeding should be expedited; and
 - (b) the court orders the proceeding be given priority in the allocation of a trial date.
- (5) If, under subsection (4), the proceeding is not stayed, this part (other than this section) does not apply to the personal injury.

151 Insurer to be joint or sole defendant

- (1) This section applies if—
- (a) a claimant brings a court proceeding based on a motor accident claim; and
 - (b) the respondent is an insured person or an insurer for the motor accident claim.
- (2) The claimant must bring the proceeding against the insured person and the insurer as joint defendants.
- (3) However, the claimant may bring a proceeding against the insurer alone if—
- (a) the insured person cannot be identified; or
 - (b) the insured person is dead; or
 - (c) it is impracticable to give the insured person a legal document.
- (4) If judgment is given in favour of the claimant on the motor accident claim for the personal injury, the judgment must be given against the insurer and not the insured person, and, if the proceeding 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 a proceeding under this section if the insurer proves that—
- (a) a CTP policy was obtained by fraud, or a material misstatement or nondisclosure; or
 - (b) the insured person is in breach of a contractual or statutory obligation.

152 Procedure if respondent is insurer

- (1) This section applies if—
- (a) a claimant brings a court proceeding based on a motor accident claim; and
 - (b) the respondent is an insured person or an insurer.
- (2) If the motor accident claim lies against 2 or more insurers, all insurers become defendants to the proceeding, but the respondents' claim manager continues to represent all insurers in the proceeding unless the court gives leave allowing 1 or more of the insurers to be separately represented.
- (3) If a motor accident claim lies against 2 or more insurers, and a legal document related to a proceeding based on the motor accident claim is given to the respondents' claim manager, all insurers are taken to have been given the legal document.
- (4) If a legal document related to a proceeding based on a motor accident claim is given to the insurer, the insured person is also taken to have been given the legal document.

153 Exclusion of summary judgment on the basis of admissions

- (1) In a court proceeding based on a motor accident claim, 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.

154 Insurer's right to call and cross-examine insured person

- (1) This section applies if—
- (a) a claimant brings a court proceeding based on a motor accident claim; and
 - (b) the defendant is, or includes, an insurer.

Note In most cases, the claimant must bring the proceeding against the insured person and the insurer as joint defendants (see s 151).

- (2) The insurer may
- (a) call the insured person as a witness; and
 - (b) with the court's leave, cross-examine the insured person.

155 Costs—small awards of damages—generally

- (1) This section applies if a court awards \$50 000 or less in damages in a proceeding (other than an appellate proceeding) based on a motor accident claim.

Note **Damages** does not include damages for pain and suffering (see s (5)).

- (2) If the court awards \$30 000 or less 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 respondent'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 must be awarded to the claimant in the way prescribed by regulation as from the date on which the proceeding began (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 respondent's mandatory final offer, costs must be awarded to the respondent as prescribed by regulation.
- (3) If the court awards more than \$30 000 but not more than \$50 000 in damages, the court must apply the following principles:
- (a) if the amount awarded is less than the claimant's mandatory final offer but more than the respondent's mandatory final offer, costs must be awarded to the claimant in accordance with the *Civil Law (Wrongs) Act 2002*, chapter 14, up to the maximum amount prescribed by regulation or, if no amount is prescribed, \$2 500;
 - (b) if the amount awarded is equal to, or more than, the claimant's mandatory final offer, costs must be awarded to the claimant as follows:
 - (i) costs up to the date on which the proceeding began must be awarded in accordance with the *Civil Law (Wrongs) Act 2002*, chapter 14, up to the maximum amount prescribed by regulation or, if no amount is prescribed, \$2 500;
 - (ii) costs on or after the date on which the proceeding began must be awarded on an indemnity basis;
 - (c) if the amount awarded is equal to, or less than, the respondent's mandatory final offer, costs must be awarded as follows:
 - (i) costs up to the date on which the proceeding began must be awarded to the claimant in accordance with the *Civil Law (Wrongs) Act 2002*, chapter 14, up to the maximum amount prescribed by regulation or, if no amount is prescribed, \$2 500;

- (ii) costs on or after the date on which the proceeding began must be awarded to the respondent in accordance with the *Civil Law (Wrongs) Act 2002*, chapter 14.
- (4) This section is subject to section 156.
- (5) In this section:
damages does not include damages for pain and suffering.

156 Costs—small awards of damages—exceptions

- (1) This section applies if a court awards \$50 000 or less in damages in a proceeding (other than an appellate proceeding) based on a motor accident claim.

Note *Damages* does not include damages for pain and suffering (see s (7)).

- (2) This section applies in addition to section 155.
- (3) The court may make an award of costs to compensate a party for costs resulting from a failure by another party to comply with a procedural obligation under this part.
- (4) 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 under s 155, the court must only allow costs related to 1 of the expert witnesses.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (5) 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 end 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.

Note A compulsory conference may be dispensed with by agreement or by court order (see s 137).

- (6) 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 section 155 (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

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

- (7) In this section:

damages does not include damages for pain and suffering.

Part 4.10 Judgment for noncompliance with time limits

157 Definitions—pt 4.10

In this part:

compliance notice—see section 158.

enforcing party—see section 158.

late party—see section 158.

relevant notice claim—see section 159.

required thing, under a compliance notice, means the thing required to be done under the notice.

158 Notice time limit not complied with

- (1) This section applies if—
 - (a) for a motor accident claim—
 - (i) the respondent has given the claimant a mandatory final notice under section 141; or
 - (ii) the court has dispensed with the obligation to exchange mandatory final offers under section 142; or
 - (iii) the time for exchanging mandatory final offers under section 143 has closed; and
 - (b) a party (the *late party*) to the claim fails to do something required to be done within a time limit for doing the thing under this Act.
- (2) However, this section does not apply if—
 - (a) the late party is the claimant; and

- (b) the claimant is not legally represented in relation to the claim.
- (3) Another party to the claim (the *enforcing party*) may give the late party a notice (the *compliance notice*) requiring the late party to do the required thing not later than 7 days after the day the late party receives the compliance notice.

159 Thing not done within 7-day period—claimant as enforcing party

- (1) This section applies if—
 - (a) an enforcing party has given a late party a compliance notice; and
 - (b) the late party does not do the required thing within the 7-day period in the notice; and
 - (c) the enforcing party is the claimant to the motor accident claim (the *relevant notice claim*) to which the notice relates.
- (2) The enforcing party may, not later than 14 days after the day the 7-day period ends, apply to the court for an order—
 - (a) if the claimant has not started a proceeding based on the relevant notice claim—giving the claimant leave to begin the proceeding; and
 - (b) giving judgment in the proceeding in favour of the claimant against the respondent.

160 Thing not done within 7-day period—respondent as enforcing party

- (1) This section applies if—
 - (a) an enforcing party has given a late party a compliance notice; and
 - (b) the late party does not do the required thing within the 7-day period in the notice; and

- (c) the enforcing party is the respondent to the relevant notice claim.
- (2) The enforcing party may, not later than 14 days after the day the 7-day period ends, apply to the court for an order—
 - (a) if the claimant has not started a proceeding based on the relevant notice claim—that the claimant is barred from beginning the proceeding; or
 - (b) giving judgment in the proceeding in favour of the respondent against the claimant.

161 Thing not done within 7-day period—court may make orders

- (1) On application for judgment under section 159 or section 160, the court may make the orders sought.
- (2) In considering the application, the court must not make an order against the late party if the party establishes that the party had a reasonable excuse for failing to do the required thing within the 7-day period.

162 Court orders in favour of claimant

- (1) This section applies if the court makes an order giving judgment in favour of the claimant against the respondent.
- (2) The court must order—
 - (a) if the claimant and respondent have each made a written offer to the other party—damages worked out by adding the claimant’s last written offer to the respondent’s last written offer and dividing the total by 2; or
 - (b) if 1 of the parties has not made a written offer—damages to be assessed by the court.

- (3) The court must order the respondent to pay the claimant's costs on an indemnity basis from the day the complying claim was received by the respondent's insurer.

163 Court orders in favour of respondent

- (1) This section applies if the court makes an order in favour of the respondent against the claimant.
- (2) Unless the court otherwise orders, the claimant must pay the respondent's costs of the proceeding including the costs of the application.

Part 4.10A Nominal defendant fund

163A Nominal defendant to pay motor accident claims from nominal defendant fund

- (1) The nominal defendant is not personally liable to pay—
 - (a) an amount payable in satisfaction of a motor accident claim made, or judgment obtained, under—
 - (i) section 59 (Nominal defendant liable—unregistered vehicle permits); or
 - (ii) section 61 (Nominal defendant liable—uninsured motor vehicle); or
 - (iii) section 63 (Nominal defendant liable—unidentified motor vehicle); or
 - (b) the amount of any costs or expenses incurred by the nominal defendant for the motor accident claim or judgment.
- (2) The nominal defendant must pay the amounts out of the nominal defendant fund.

Note The nominal defendant fund is established under s 163B.

163B Nominal defendant fund

- (1) The CTP regulator must establish a fund (the *nominal defendant fund*).
- (2) The following must be paid into the nominal defendant fund:
 - (a) any penalties or penalty interest imposed under this Act;
 - (b) amounts recovered by the nominal defendant under this Act;

Note The nominal defendant may recover amounts under:

- s 172 (Insurer may recover costs if motor vehicle defective)

- s 173 (Insurer may recover costs if fraud)
 - s 174 (Nominal defendant may recover costs from responsible person or driver)
 - s 242 (Nominal defendant may recover from insolvent insurer).
- (c) amounts collected under section 163C;
- (d) UVP liability contributions paid under section 163E;
- (e) interest from time to time accruing from the investment of the nominal defendant fund;
- (f) amounts required to be paid into the nominal defendant fund under this or another Act.
- (3) The following must be paid from the nominal defendant fund:
- (a) amounts required to be paid from the fund under section 163A (Nominal defendant to pay motor accident claims from nominal defendant fund);
- (b) all other amounts required to be paid from the fund under this or another Act.
- (4) The CTP regulator may invest money in the nominal defendant fund which is not immediately required for the fund—
- (a) in any way that the Treasurer is authorised to invest money under the *Financial Management Act 1996*; or
- (b) in any other way approved by the Minister and the Treasurer.

163C Collections for nominal defendant fund

- (1) The CTP regulator must, each financial year, collect an amount for the nominal defendant fund—
- (a) from the people and funds prescribed by regulation; and
- (b) in accordance with the arrangements prescribed by regulation.

- (2) The CTP regulator may decide the amount to be collected for a financial year.
- (3) The CTP regulator must not decide an amount for a financial year if the CTP regulator considers that satisfactory arrangements have been made for that year (under the insurance industry deed or otherwise) by licensed insurers to meet motor accident claims made against the nominal defendant.

Note The insurance industry deed is dealt with in s 9.

163D CTP regulator must decide contribution for nominal defendant liability

- (1) The CTP regulator must decide an amount (the *UVP liability contribution*) to be paid to fund the present and likely future liability of the nominal defendant under this Act for claims in relation to unregistered vehicle permits.
- (2) The CTP regulator must make guidelines for UVP liability contributions (*UVP liability contribution guidelines*).
- (3) Without limiting subsection (2), the guidelines may provide for the following:
 - (a) how UVP liability contributions are to be worked out;
 - (b) the factors to be taken into account in working out UVP liability contributions.
- (4) A UVP liability contributions guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

163E UVP liability contribution to be paid with unregistered vehicle permit

If a person applies to the road transport authority for an unregistered vehicle permit for a motor vehicle, the person must also pay to the

road transport authority the UVP liability contribution for the period of the permit.

Note 1 Unregistered vehicle permits are issued under the *Road Transport (Vehicle Registration) Act 1999*, s 7.

Note 2 UVP liability contributions paid to the road transport authority under this section must be paid into the nominal defendant fund (see s 163B).

Part 4.11 CTP insurer and nominal defendant may recover costs incurred

Division 4.11.1 Preliminary

164 What are costs?

In this part:

costs, when used in reference to the costs of an insurer for a motor accident claim, includes—

- (a) the amount paid out by the insurer on the claim to the claimant or for the claimant's benefit, including—
 - (i) the cost to the insurer of paying medical expenses for the claim; and
 - (ii) the cost to the insurer of providing rehabilitation services for the claim; and

Note 1 Early payment of medical expenses is dealt with in ch 3.

Note 2 Medical expenses and rehabilitation services are dealt with in pt 4.6.

- (b) the amounts paid by the insurer in investigating the claim and of litigation related to the claim (but not the insurer's general administration costs).

165 Insurer may only recover costs once

An insurer is not entitled to recover costs under a provision of this part if the insurer has already recovered the costs under another provision.

166 Proceeding to recover costs

A proceeding by an insurer under a provision of this part may be brought separately or by way of a third-party proceeding.

Division 4.11.2 CTP insurers

167 CTP insurer may recover excess if 25% fault

- (1) This section applies if—
 - (a) personal injury is caused by a motor accident involving a CTP insured person; and
 - (b) the CTP insured person is more than 25% at fault for the motor accident.
- (2) The CTP insurer for the CTP insured person may recover as a debt from the CTP insured person—
 - (a) if the costs reasonably incurred by the CTP insurer for a motor accident claim for the motor accident are not more than \$500—the total of the costs incurred; or
 - (b) if the costs reasonably incurred by the CTP insurer for a motor accident claim for the motor accident are more than \$500—\$500.

Note 1 A CTP policy insures against the risk of liability for personal injury caused by a motor accident (see s 21).

Note 2 *Costs* include medical expenses and rehabilitation costs (see s 164).

168 CTP insurer may recover \$2 000 if CTP premium fraud

- (1) This section applies if—
 - (a) personal injury is caused by a motor accident involving a CTP insured person; and

- (b) the CTP insured person deliberately avoided paying the correct CTP premium for the CTP policy by making a statement in relation to the issue of the policy that the CTP insured person knew was false or misleading in a material particular.
- (2) The CTP insurer may recover as a debt from the CTP insured person—
- (a) if the costs reasonably incurred by the CTP insurer for a motor accident claim for the motor accident are not more than \$2 000—the total of the amount paid and costs incurred; or
 - (b) if the costs reasonably incurred by the CTP insurer for a motor accident claim for the motor accident are more than \$2 000—\$2 000.

Note 1 A CTP policy insures against the risk of liability for personal injury caused by a motor accident (see s 21).

Note 2 *Costs* include medical expenses and rehabilitation costs (see s 164).

169 CTP insurer may recover costs if no authority to use vehicle

- (1) This section applies if—
- (a) personal injury is caused by a motor accident involving a CTP insured person; and
 - (b) the CTP insured person was, at the time of the motor accident, using the motor vehicle—
 - (i) without the authority of the responsible person for the vehicle; and
 - (ii) without lawful justification or excuse; and
 - (iii) without reasonable grounds for believing that the CTP insured person had the authority of the responsible person, or lawful justification or excuse, for using the motor vehicle.

- (2) The insurer may recover as a debt from the CTP insured person any costs reasonably incurred by the insurer for a motor accident claim for the personal injury.

Note A CTP policy insures against the risk of liability for personal injury caused by a motor accident (see s 21).

170 CTP insurer may recover costs if injury intentional

- (1) This section applies if—
- (a) personal injury is caused by a motor accident involving a CTP insured person; and
 - (b) the CTP insured person intended to injure the claimant or someone else.
- (2) The CTP insurer may recover as a debt from the CTP insured person any costs reasonably incurred by the CTP insurer for a motor accident claim for the personal injury.

Note A CTP policy insures against the risk of liability for personal injury caused by a motor accident (see s 21).

171 CTP insurer may recover costs if driver using alcohol or drugs

- (1) This section applies if—
- (a) personal injury is caused by a motor accident involving a CTP insured person; and
 - (b) the CTP insured person was the driver of the motor vehicle at the time of the motor accident; and
 - (c) the CTP insured person was, at the time of the motor accident, unable to exercise effective control of the motor vehicle because of the CTP insured person's ingestion of—
 - (i) alcohol; or

- (ii) a non-medicinal drug or a combination of non-medicinal drugs; or
 - (iii) a combination of alcohol and 1 or more non-medicinal drugs.
- (2) The CTP insurer may recover as a debt from the CTP insured person any costs reasonably incurred by the CTP insurer for a motor accident claim for the personal injury if the costs are reasonably attributable to the CTP insured person's inability to exercise effective control of the motor vehicle.
- (3) In this section:

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

Note A CTP policy insures against the risk of liability for personal injury caused by a motor accident (see s 21).

Division 4.11.3 CTP insurer and nominal defendant

172 Insurer may recover costs if motor vehicle defective

- (1) This section applies if—
- (a) personal injury is caused by a motor accident involving an insured person; and
 - (b) the motor accident is attributable wholly or partly to a defect in a 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.
- (2) The insurer may recover as a debt from the manufacturer or repairer the proportion of the costs reasonably incurred by the insurer for a motor accident claim for the personal injury that reasonably reflects the degree of the manufacturer's or repairer's responsibility for the motor accident.

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

Note 1 A CTP policy insures against the risk of liability for personal injury caused by a motor accident (see s 21).

Note 2 An amount recovered under this section by the nominal defendant must be paid into the nominal defendant fund (see s 163B).

173 Insurer may recover costs if fraud

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

Note An amount recovered under this section by the nominal defendant must be paid into the nominal defendant fund (see s 163B).

Division 4.11.4 Nominal defendant

174 Nominal defendant may recover costs from responsible person or driver

- (1) This section applies if personal injury is caused by a motor accident involving an uninsured motor vehicle or an unidentified motor vehicle.

Note The nominal defendant is liable in relation to uninsured motor vehicles (see s 61), and unidentified motor vehicles (see s 63).

- (2) The nominal defendant may recover as a debt from the responsible person for the vehicle, or the driver of the vehicle, or both, any costs reasonably incurred by the nominal defendant for a motor accident claim for the personal injury.
- (3) It is a defence to a proceeding under this section against the responsible person for the vehicle if the responsible person proves that—

- (a) the motor vehicle was driven without the authority of the responsible person; or
 - (b) the responsible person believed on reasonable grounds that the motor vehicle was insured.
- (4) It is a defence to a proceeding under this section against the driver for the driver to prove that the driver believed on reasonable grounds that—
- (a) the driver had the responsible person's consent to drive the motor vehicle; and
 - (b) the motor vehicle was insured.
- (5) 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.
- (6) This section does not affect a right of recovery that the nominal defendant may have, apart from this section, against the insured person.

Note An amount recovered under this section must be paid into the nominal defendant fund (see s 163B).

175 Nominal defendant—access to territory information etc

The nominal defendant is entitled to have access to information and materials in the possession of the Territory that may be relevant to the recovery of costs that the nominal defendant is entitled to recover under this part.

Part 4.12 Other matters

176 Insurer to deter fraudulent motor accident claims

An insurer must take all reasonable steps to deter and prevent the making of fraudulent motor accident claims.

177 Extraterritorial operation

- (1) It is the intention of the Legislative Assembly that any provision of a Territory law that provides for limits on liability for damages for personal injury arising out of motor vehicle accidents that happen in the ACT—
 - (a) is to apply to the full extent of the Legislative Assembly's capacity to legislate extraterritorially, even if damages are assessed outside the ACT; and
 - (b) is to be regarded by courts as a substantive rather than a procedural provision.
- (2) If a claimant, in a proceeding brought in another jurisdiction, recovers damages in excess of the maximum amount that could have been recovered if the proceeding had been brought in the ACT, the respondent may recover from the claimant the amount (the *excess amount*) by which the damages exceed the maximum amount of damages that could have been awarded had the proceeding been brought in the ACT.
- (3) The excess amount may be recovered as a debt to the claimant.
- (4) In this section:
another jurisdiction means a jurisdiction other than the ACT and includes a jurisdiction outside Australia.

Chapter 5 Licensing of insurers

Part 5.1 Important concepts

178 What is a *CTP insurer licence*?

In this Act:

CTP insurer licence, for a corporation, means a licence issued under section 184 (Decision on application) to carry on business as a CTP insurer.

179 Meaning of *former licensed insurer and licensed insurer*

In this Act:

former licensed insurer means an entity that was, at any time, a licensed insurer but is no longer a licensed insurer.

licensed insurer means a corporation that holds a CTP insurer licence.

180 Offence—unlicensed insurer issues CTP policy

- (1) A person commits an offence if the person—
- (a) issues a CTP policy; and
 - (b) is not a licensed insurer.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

- (2) A person commits an offence if the person—
- (a) purports to issue a CTP policy; and

(b) is not a licensed insurer.

Maximum penalty: 100 penalty units.

181 Unlicensed insurer liable for CTP policy

If a person who is not a licensed insurer issues a CTP policy, the CTP policy is not annulled or affected only because the person is not a licensed insurer.

Part 5.2 Application for CTP insurer licence

182 Licence—application

- (1) A corporation may apply to the CTP regulator for a CTP insurer licence.
- (2) The application must comply with the requirements prescribed by regulation.
- (3) The CTP regulator may, in writing, ask the applicant to give the CTP regulator more information that the CTP regulator reasonably needs to decide the application, including the following:
 - (a) details of the shareholders, directors and other managers of the applicant;
 - (b) any previous returns and accounts under—
 - (i) the Corporations Act; and
 - (ii) the *Insurance Act 1973* (Cwlth);
 - (c) details of reinsurance arrangements to which the applicant is a party;

Note Reinsurance arrangements are further dealt with in s 218.
 - (d) a draft business plan.

Note Business plans are dealt with in s 211.
- (4) The CTP regulator need not decide whether the corporation is eligible for a CTP insurer licence if—
 - (a) the corporation's application does not comply with any requirement prescribed by regulation; or

- (b) the corporation does not give the CTP regulator information asked for under subsection (3).

Note 1 If a form is approved under s 276 for an application, the form must be used.

Note 2 A fee may be determined under the *Road Transport (General) Act 1999*, s 96, for this section.

Note 3 Giving false or misleading information is an offence against the Criminal Code, s 338.

183 Licence—eligibility

A corporation is eligible for a CTP insurer licence only if the corporation is—

- (a) authorised under the *Insurance Act 1973* (Cwlth) to carry on insurance business; and
(b) a party to the insurance industry deed.

184 Decision on licence application

- (1) On an application by a corporation for a licence, the CTP regulator must—
- (a) issue the licence; or
(b) refuse to issue the licence if the CTP regulator—
- (i) is not satisfied that the applicant would properly exercise the functions of a licensed insurer if issued with a licence; or
(ii) must not issue the licence under subsection (4).

Note A decision to refuse to issue a licence is a reviewable decision (see *Road Transport (General) Act 1999*, pt 7 and *Road Transport (General) Regulation 2000*).

- (2) In deciding whether the applicant would not, or would not be able to, properly exercise the functions of a licensed insurer if issued with a licence, the CTP regulator must consider the following:
 - (a) the paid-up share capital and reserves of the applicant;
 - (b) the constitution of the applicant (if any);
 - (c) the reinsurance arrangements of the applicant;
 - (d) whether issuing the licence will contribute to the efficiency of the motor accidents scheme under this Act generally;
 - (e) anything else prescribed by regulation.
- (3) The CTP regulator may consider anything else the CTP regulator considers appropriate for this Act.
- (4) The CTP regulator must refuse to issue a licence if the applicant does not comply with a requirement prescribed by regulation.
- (5) If the CTP regulator proposes to issue a licence to a corporation, the CTP regulator must, at least 14 days before the licence is issued, tell all licensed insurers the name of the corporation.
- (6) Failure by the CTP regulator to comply with subsection (5) does not affect the validity of a corporation's licence.

Note Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see Legislation Act, s 180).

185 Licence conditions

- (1) It is a condition of a CTP insurer licence that the licensed insurer must comply with the following:
 - (a) section 38 (Licensed insurer to charge approved premium);
 - (b) the CTP premium guidelines;

Note The CTP premium guidelines are made under s 39.

Section What kinds of expenses must be paid by insurer?

- (c) section 40 (Licensed insurer to apply for approval of premiums);
 - (d) section 73 (What kinds of expenses must be paid by insurer?);
 - (e) section 122 (Respondent to pay injured person's medical expenses);
 - (f) section 127 (Respondent to make rehabilitation services available);
 - (g) section 132 (Respondent to pay for rehabilitation services);
 - (h) the medical and rehabilitation guidelines;
Note The medical and rehabilitation guidelines are made under s 135.
 - (i) section 212 (Licensed insurer to have business plan);
 - (j) section 213 (Licensed insurer to comply with business plan);
 - (k) section 214 (Licensed insurer to revise business plan);
 - (l) the CTP guidelines;
Note The CTP guidelines are made under s 215.
 - (m) the business plan guidelines;
Note The business plan guidelines are made under s 215.
 - (n) section 218 (1) (Reinsurance arrangements of licensed insurers);
 - (o) section 220 (Licensed insurer to provide investment details).
- (2) A CTP insurer licence is also subject to any condition—
- (a) prescribed by regulation; or

(b) decided by the CTP regulator.

Note 1 Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see Legislation Act, s 180).

Note 2 If the CTP regulator is unable, under s 204 or s 205, to cancel a licence because the CTP regulator is not satisfied the insurer's liabilities have been appropriately dealt with, the CTP regulator may, instead, impose a condition on the licence that prohibits the insurer from issuing any further CTP policies (see s 206).

(3) A condition under subsection (2) (b) must not be inconsistent with any condition prescribed by regulation that applies to the CTP insurer licence.

(4) The CTP regulator may amend a CTP insurer licence by—

(a) including a condition on the licence; or

(b) amending or revoking a condition included by the CTP regulator on the licence.

(5) If the CTP regulator amends a licensed insurer's licence under subsection (4), the CTP regulator must tell the insurer about the amendment as soon as practicable, but not later than 30 days after the day the CTP regulator decides the amendment.

Note A decision by the CTP regulator under s (2) (b) or (4) is a reviewable decision (see *Road Transport (General) Act 1999*, pt 7 and *Road Transport (General) Regulation 2000*).

(6) This section is subject to section 187 (Prohibited licence conditions).

186 Matters that may be regulated by licence conditions

(1) Without limiting section 185, the conditions to which a CTP insurer licence may be subject include the following conditions:

(a) a condition for ensuring compliance with the obligations of the licensed insurer;

- (b) a condition for ensuring that insurance CTP premiums for CTP policies are sufficient to meet motor accident claims;
 - (c) a condition for requiring the licensed insurer to achieve early resolution of motor accident claims, and early payment for treatment of injured people, at particular levels;
 - (d) a condition for ensuring general efficiency in relation to motor accident claims and payments;
 - (e) a condition relating to the provision of information about motor accident claims and profits.
- (2) A licensed insurer is taken not to have contravened a condition mentioned in subsection (1) (c) if the insurer establishes that—
- (a) the insurer gave a report to the CTP regulator within a reasonable period after the condition is contravened; and
 - (b) the report sets out reasonable grounds for justifying the contravention.
- (3) This section is subject to section 187.

187 Prohibited licence conditions

- (1) A CTP insurer licence must not be subject to any of the following conditions:
- (a) a condition that gives, or is likely to give, a competitive advantage to a licensed insurer over another licensed insurer;
 - (b) a condition that requires a licensed insurer to obtain a share of the insurance market.
- (2) A condition mentioned in subsection (1) has no effect on a CTP licence.

188 Offence—contravening licence condition

- (1) A person commits an offence if the person—
- (a) is a licensed insurer; and
 - (b) contravenes a condition of the person's CTP insurer licence.

Maximum penalty: 100 penalty units.

- (2) This section does not apply to a condition mentioned in section 187.

Note 1 Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

Note 2 Contravention of a licence condition is also grounds for—

- suspension of the CTP insurer licence (see s 194)
- the CTP regulator to apply to the ACAT for an occupational discipline order in relation to the licensed insurer (see pt 5.4).

However, if a licensed insurer is convicted of an offence under this section, the ACAT must not order the licensed insurer to pay an amount to the Territory or someone else in relation to the same act or omission (see s 202 (3)).

189 Contravention of licence condition does not affect CTP policy

If a person issues a CTP policy in contravention of a licence condition, the CTP policy is not annulled or affected only because the person is in contravention of the condition.

190 Offence—unlicensed insurer contravening licence condition

A person commits an offence if—

- (a) the person is not a licensed insurer; and
- (b) the person engages in conduct that would, if the person was a licensed insurer, contravene a condition of a CTP insurer licence; and

- (c) the condition relates to a motor accident.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

191 Licence—length

A CTP insurer licence—

- (a) takes effect on the day stated in the licence; and
- (b) continues in force until it is cancelled.

192 Transfer of licences

- (1) A licensed insurer (the *old insurer*) may, with the approval of the CTP regulator, transfer the insurer's licence to—
 - (a) another licensed insurer (the *new insurer*); or
 - (b) a corporation to whom the CTP regulator proposes to issue a licence (the *new insurer*).
- (2) The CTP regulator must not approve the transfer of a licence unless satisfied that the new insurer is able to meet the past, present and future liabilities of the old insurer—
 - (a) under any CTP policy for which the old insurer is the insurer; and
 - (b) to the nominal defendant fund; and
 - (c) to any other licensed insurer.

Part 5.3 Suspension of CTP insurer licence

193 Licence suspension notices

The CTP regulator may suspend a CTP insurer licence under section 194 or section 195 by giving the licensed insurer a written suspension notice stating—

- (a) that the licence is suspended on and from the day stated in the notice; and
- (b) the reasons for the suspension.

Note Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see Legislation Act, s 180).

194 Grounds for licence suspension—contraventions

- (1) The CTP regulator may suspend a CTP insurer licence if the CTP regulator believes on reasonable grounds that the insurer has contravened—
 - (a) this Act; or
 - (b) a condition of the insurer's CTP insurer licence; or
 - (c) the insurance industry deed.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) However, if the CTP regulator is satisfied that the contravention could be remedied not later than 21 days after the day the contravention happened, the CTP regulator must not suspend the licence under this section until at least 21 days after the day the contravention happened.

Note 1 A decision to suspend a CTP insurer licence is a reviewable decision (see the *Road Transport (General) Act 1999*, pt 7 and the *Road Transport (General) Regulation 2000*).

Note 2 The grounds in s (1) are also grounds for the CTP regulator to apply to the ACAT for an occupational discipline order in relation to the licensed insurer (see pt 5.4).

195 Grounds for licence suspension—grounds other than contraventions

The CTP regulator may suspend a licensed insurer's CTP insurer licence if—

- (a) the insurer is not authorised under the *Insurance Act 1973* (Cwlth) to carry on insurance business; or
- (b) any of the following is appointed over all or part of the assets, or undertaking, of the insurer:
 - (i) a provisional liquidator, liquidator or official liquidator;
 - (ii) a receiver, receiver and manager or official manager;
 - (iii) a trustee; or
- (c) the insurer is given a direction under the *Insurance Act 1973* (Cwlth), section 51 (Inquiry by APRA and directions relating to certain assets) or section 62 (Directions); or
- (d) an inspector is appointed to investigate the affairs of the insurer under the *Insurance Act 1973* (Cwlth), part V (Investigations); or
- (e) the CTP regulator receives a report under section 224 (Audit of accounting records and compliance with guidelines) and

believes on reasonable grounds that the insurer is, or is likely to become, unable to meet its liabilities under this Act or under CTP policies issued by the insurer; or

- (f) the insurer defaults in the payment of principal or interest of more than \$100 000 under any debenture, or series of debentures, issued by the insurer, unless the default occurs because the insurer genuinely disputes its liability to make the payment; or
- (g) the insurer enters into, or resolves to enter into any of the following, other than for a reconstruction or amalgamation on terms that have been approved by the CTP regulator:
 - (i) an arrangement, composition or compromise with its creditors;
 - (ii) a transfer for the benefit of its creditors; or
- (h) a proceeding is commenced to sanction an arrangement, composition, compromise or transfer mentioned in paragraph (g), other than for a reconstruction or amalgamation on terms that have been approved by the CTP regulator; or
- (i) an application (other than a frivolous or vexatious application) or order is made for the winding up or dissolution of the insurer, other than for a reconstruction or amalgamation on terms that have been approved by the CTP regulator; or
- (j) a resolution is passed for the winding up or dissolution of the insurer, other than for a reconstruction or amalgamation on terms that have been approved by the CTP regulator; or
- (k) there is a change in the effective control of the insurer; or
- (l) the insurer becomes a subsidiary of a corporation of which it was not a subsidiary when the licence was issued; or
- (m) the CTP regulator believes on reasonable grounds that the insurer has failed to comply with a condition imposed on the

insurer's authority to carry on insurance business under the *Insurance Act 1973* (Cwlth); or

- (n) a person claiming to be a creditor of the insurer gives the insurer a demand requiring the insurer to pay an amount of more than \$100 000, and the insurer fails to pay the amount, or secure or compound for it to the satisfaction of the person, within 3 weeks after the day the demand is given; or
- (o) an execution or other process issued on a judgment, decree or order of a court in favour of a creditor of the insurer is returned unsatisfied, completely or partly, and the amount unsatisfied is more than \$100,000; or
- (p) the insurer agrees to the suspension.

Note 1 A decision to suspend a CTP insurer licence is a reviewable decision (see *Road Transport (General) Act 1999*, pt 7 and *Road Transport (General) Regulation 2000*).

Note 2 A licensed insurer, or former licensed insurer, commits an offence if any of the events or things mentioned in this section, other than paragraph (e), paragraph (m) or paragraph (p), happens and the person does not tell the CTP regulator about it (see s 234).

196 Ending licence suspension

- (1) The CTP regulator may, by written notice given to a licensed insurer, end the suspension of the insurer's CTP insurer's licence.
- (2) The CTP regulator may end the suspension of a CTP insurer's licence only if the regulator believes on reasonable grounds that the licensed insurer is able to comply with the requirements that would be imposed on the insurer if it were issued with a licence for the first time.

197 Offence—issuing CTP policy if licence suspended

A person commits an offence if—

- (a) the person is a licensed insurer; and

- (b) the person's CTP insurer licence is suspended; and
- (c) the person issues a CTP policy.

Maximum penalty: 100 penalty units

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

Part 5.4 Occupational discipline

198 **Meaning of *licensed insurer*—pt 5.4**

In this part:

licensed insurer includes a former licensed insurer.

199 **CTP regulator may choose occupational discipline instead of prosecution**

In regulating the operation of licensed insurers, the CTP regulator may, but need not, choose to apply to the ACAT for an occupational discipline order in relation to licensed insurers rather than pursuing a prosecution under this Act if the CTP insurer believes on reasonable grounds it would be in the public interest to do so.

Note The CTP regulator may apply to the ACAT under s 201.

200 **Grounds for occupational discipline**

- (1) Each of the following is a *ground for occupational discipline* in relation to a licensed insurer:
 - (a) the licensed insurer has contravened this Act;
 - (b) the licensed insurer has contravened a condition of the insurer's CTP insurer licence;
 - (c) the licensed insurer has contravened the insurance industry deed;
 - (d) the licensed insurer has contravened, or is contravening, an occupational discipline order;
 - (e) the licensed insurer's licence was obtained by fraud or mistake;
 - (f) another ground prescribed by regulation.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) However, subsection (1) (a), (b) and (c) apply to a former licensed insurer only in relation to anything that happened while the person was licensed.

Note The grounds in s (1) (a), (b) and (c) are also the grounds for licence suspension under s 194.

201 Applications to ACAT for occupational discipline

If the CTP regulator believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensed insurer, the CTP regulator may apply to the ACAT for an occupational discipline order in relation to the licensed insurer.

202 Occupational discipline orders

- (1) This section applies if the ACAT may make an occupational discipline order in relation to a licensed insurer.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an order.

- (2) In addition to any other occupational discipline order that the ACAT may make, the ACAT may require the licensed insurer to pay an amount to the Territory or someone else, of not more than—
- (a) if the licensed insurer is an individual—\$10 000; or
- (b) if the licensed insurer is a corporation—\$50 000.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out other occupational discipline orders the ACAT may make.

- (3) However, if a licensed insurer is convicted of an offence under section 188 (Offence—contravening licence condition) in relation to an act or omission, the ACAT must not make an occupational discipline order requiring the licensed insurer to pay an amount to the Territory or someone else in relation to the same act or omission.

- (4) If the ACAT orders a licensed insurer to pay an amount, the amount must be paid into the nominal defendant fund.

Part 5.5 Cancellation of CTP insurer licences

203 Licence cancellation notices

- (1) The CTP regulator may cancel a licensed insurer's CTP insurer licence under section 204 or section 205 by giving a written notice to the insurer stating—
 - (a) that the licence is cancelled on the day stated in the notice; and
 - (b) the reasons for the cancellation.
- (2) The day stated in the notice must not be a day earlier than the day the licensed insurer receives the notice.

Note 1 Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see Legislation Act, s 180).

Note 2 A decision to cancel a CTP insurer licence is a reviewable decision (see *Road Transport (General) Act 1999*, pt 7 and *Road Transport (General) Regulation 2000*).

204 Grounds for licence cancellation

- (1) The CTP regulator may cancel a licensed insurer's CTP insurer licence for any reason the CTP regulator considers appropriate.
- (2) Without limiting subsection (1), the CTP regulator may cancel a licence for reasons relating to the motor accidents scheme under this Act generally, whether or not the reasons relate to the efficiency and conduct of the licensed insurer.
- (3) Before cancelling a licensed insurer's CTP insurer licence, the CTP regulator must give the licensed insurer an opportunity to make written submissions about the reasons for the cancellation.

- (4) This section is subject to section 206 (Insurer's liabilities to be met before licence cancelled).

205 Licence cancellation after surrender

- (1) If a licensed insurer surrenders the insurer's CTP insurer licence to the CTP regulator, the CTP regulator may cancel the licence only if the CTP regulator approves the surrender.
- (2) This section is subject to section 206 (Insurer's liabilities to be met before licence cancelled).

206 Insurer's liabilities to be met before licence cancelled

- (1) The CTP regulator may cancel a CTP insurer licence under section 204 or section 205 only if satisfied that the licensed insurer has—
- (a) discharged all of its past, present and future liabilities—
 - (i) under any CTP policy for which it is the insurer; and
 - (ii) to the nominal defendant fund; and
 - (iii) to any other licensed insurer; or
 - (b) provided security, or entered into other arrangements satisfactory to the CTP regulator, for the liabilities.
- (2) If the CTP regulator is unable, under subsection (1), to cancel a licensed insurer's CTP insurer licence, the CTP regulator may, instead, impose a condition on the licence that prohibits the insurer from issuing any further CTP policies.

Note It is an offence to contravene a licence condition (see s 188).

Part 5.6 Transfer of CTP policies to other insurers

207 Policy transfer notices

The CTP regulator may transfer an insurer's CTP policies to another insurer under section 208 by giving a written transfer notice to both insurers stating—

- (a) the CTP policies that are to be transferred; and
- (b) the day when the transfer happens.

Note 1 Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see Legislation Act, s 180).

Note 2 A decision to transfer a CTP insurer licence is a reviewable decision (see *Road Transport (General) Act 1999*, pt 7 and *Road Transport (General) Regulation 2000*).

208 Transfer of policies to other insurers

- (1) The CTP regulator may transfer an insurer's CTP policies to a licensed insurer if—
 - (a) the insurer's CTP insurer licence is cancelled or otherwise ceases to be in force; or
 - (b) the CTP regulator is satisfied that it is necessary to do so to ensure compliance with a condition of the licence.
- (2) In this section:

insurer means a licensed insurer, and includes a person whose CTP insurer licence has been cancelled or has otherwise ceased to be in force.

209 Effect of transfer of policies

- (1) If a CTP policy (the *original policy*) is transferred from an insurer (the *old insurer*) to a licensed insurer (the *new insurer*) under section 208—
 - (a) the original policy is cancelled; and
 - (b) the new insurer is taken to have issued a CTP policy—
 - (i) on the day of the transfer; and
 - (ii) on the same terms as the original policy; and
 - (iii) for the balance of the period of the original policy; and
 - (c) the old insurer must pay to the new insurer—
 - (i) the same proportion of the CTP premium paid, or to be paid, for the original policy as the balance of the indemnity period of the policy bears to the whole indemnity period of the policy; and
 - (ii) an additional amount decided by the CTP regulator for the income from investment and the management fee for the CTP premium.
- (2) The new insurer may recover an amount payable under subsection (1) (c) as a debt from the old insurer.
- (3) Cancellation of a CTP policy under this section ends the indemnity period of the policy but, subject to this section, does not affect any right, obligation or liability acquired, accrued or incurred under the policy during the indemnity period.

210 CTP insurer licence register

- (1) The CTP regulator must keep a register of—
 - (a) the name of each corporation that is—
 - (i) issued with a CTP insurer licence; or

- (ii) refused a CTP insurer licence; and
 - (b) for each CTP insurer licence issued by the CTP regulator, the following details:
 - (i) any condition imposed on the licence;
 - (ii) any suspension of the licence;
 - (iii) any cancellation of the licence;
 - (iv) any transfer of the licence;
 - (c) anything else prescribed by regulation.
- (2) The CTP regulator may keep any other details in the register that the CTP regulator considers appropriate.

Part 5.7 Supervision of licensed insurers

211 **What is a *business plan*?**

In this Act:

business plan, for a licensed insurer—

- (a) means a plan describing how the licensed insurer's CTP insurance business must be carried out; and

Note *CTP insurance business*, for a licensed insurer, means any business associated with CTP policies (see s 11).

- (b) must include a description of how the following things must be carried out:

- (i) motor accident claims handling;
- (ii) management;
- (iii) expenses;
- (iv) systems for processing and transmitting information.

212 **Licensed insurer to have business plan**

- (1) A licensed insurer must have a business plan for the insurer's CTP insurance business.

Note *CTP insurance business*, for a licensed insurer, means any business associated with CTP policies (see s 11).

- (2) The business plan must comply with the business plan guidelines.

Note The CTP regulator may make business plan guidelines under s 215.

- (3) If the CTP regulator asks a licensed insurer for the business plan, the licensed insurer must give the CTP regulator a copy of the business plan as soon as practicable.

Note A CTP insurer licence is subject to the condition that the licensed insurer must comply with this section (see s 185).

213 Licensed insurer to comply with business plan

- (1) A licensed insurer must carry out the insurer's CTP insurance business in accordance with the insurer's business plan.
- (2) If a licensed insurer carries out the insurer's CTP insurance business in a way that departs significantly from the business plan, the insurer must tell the CTP regulator.

Note A CTP insurer licence is subject to the condition that the licensed insurer must comply with this section (see s 185).

214 Licensed insurer to revise business plan

A licensed insurer must revise the insurer's business plan—

- (a) at least once each year; and
- (b) if the licensed insurer's CTP insurance business departs significantly from the business plan; and
- (c) if the CTP regulator directs the insurer to revise the business plan.

Note A CTP insurer licence is subject to the condition that the licensed insurer must comply with this section (see s 185).

215 CTP guidelines

- (1) The CTP regulator may make CTP guidelines.

Note Power to make a statutory instrument includes power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see Legislation Act, s 46).

- (2) However, the CTP regulator must consult each licensed insurer before making a CTP guideline.

Note A CTP insurer licence is subject to the condition that the licensed insurer must comply with the CTP guidelines (see s 185).

- (3) The CTP guidelines may make provision for the following:
- (a) issue of CTP policies;
 - (b) business plans (the *business plan guidelines*) for licensed insurers.
- (4) A CTP guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

216 What is a licensed insurer's *market share*?

In this part:

market share, of a licensed insurer, means, at any particular time, the proportion worked out under section 217 by the CTP regulator for the insurer and applicable at the time.

217 Working out market share of each licensed insurer

- (1) A licensed insurer must, not later than the due date for each quarter and each financial year, tell the CTP regulator the amount of insurance CTP premiums received by the insurer for all CTP policies issued by the licensed insurer during the quarter or year.
- (2) The CTP regulator must, after notifications have been received from all licensed insurers for a quarter or year, decide, for each licensed insurer, the proportion that the CTP premiums received by the licensed insurer for the quarter or year bears to the total amount of CTP premiums received by all licensed insurers for the quarter or year.

- (3) The CTP regulator may round a market share worked out under this section to .01%.
- (4) After working out the market share for each licensed insurer for each quarter and financial year, the CTP regulator must tell all licensed insurers about each licensed insurer's market share for the quarter or financial year.
- (5) In this section:
due date means—
 - (a) for each quarter—the day, after the end of the quarter, decided by the CTP regulator and notified in writing to the licensed insurer; or
 - (b) for each financial year—the day, after the end of the financial year, decided by the CTP regulator and notified in writing to the licensed insurer.

218 Reinsurance arrangements of licensed insurers

A licensed insurer must tell the CTP regulator—

- (a) details of arrangements made, or proposed to be made, for reinsurance for liabilities under CTP policies issued by the licensed insurer; and
- (b) the terms of any approval of APRA under the *Insurance Act 1973* (Cwlth) for the reinsurance.

Note A CTP insurer licence is subject to the condition that the licensed insurer must comply with this section (see s 185).

219 What are *third-party funds*?

In this part:

third-party funds, of a licensed insurer, means—

- (a) the funds of the insurer derived from the payment of CTP premiums for CTP policies; and

- (b) from the investment of the funds.

220 Licensed insurer to provide investment details

If the CTP regulator asks a licensed insurer to give the CTP regulator details of how the insurer's third-party funds, and other funds, are invested, the licensed insurer must comply with the request.

Note A CTP insurer licence is subject to the condition that the licensed insurer must comply with this section (see s 185).

221 Offence—licensed insurer to keep accounts

- (1) A licensed insurer commits an offence if the insurer does not keep the following accounting and other records for the business or financial position of the insurer:
 - (a) the records prescribed by regulation;
 - (b) the records that the insurer is directed, in writing by the CTP regulator, to keep.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

- (2) In this section:

accounting records include the following:

- (a) invoices;
- (b) receipts;
- (c) orders for the payment of amounts;
- (d) bills of exchange;
- (e) cheques;
- (f) promissory notes;

- (g) vouchers and other prime entry documents;
- (h) the working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up.

222 Offence—licensed insurer to provide returns

- (1) A licensed insurer commits an offence if the licensed insurer does not give the CTP regulator the following returns for the business or financial position of the insurer:
 - (a) the returns prescribed by regulation;
 - (b) if the CTP regulator directs the insurer, in writing, to give a return—the returns that the insurer is directed to give.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

- (2) A licensed insurer commits an offence if the licensed insurer does not give the returns mentioned in subsection (1) in the way—
 - (a) prescribed by regulation; or
 - (b) if the CTP regulator directs the insurer, in writing, to give the returns in a stated way—that the CTP regulator directs.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 66).

- (3) A licensed insurer commits an offence if the licensed insurer does not include in the returns mentioned in subsection (1) the details—
 - (a) prescribed by regulation; and

- (b) if the CTP regulator directs the insurer, in writing, to include stated details—that the CTP regulator directs.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 66).

- (4) A licensed insurer commits an offence if the licensed insurer, when giving the returns mentioned in subsection (1), does not also give the CTP regulator the documents—
 - (a) prescribed by regulation; or
 - (b) if the CTP regulator directs the insurer, in writing, to give stated documents—that the CTP regulator directs.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 66).

- (5) A licensed insurer commits an offence if the licensed insurer does not give the returns mentioned in subsection (1) to the CTP regulator—
 - (a) not later than 6 weeks after the end of each quarter; or
 - (b) if the CTP regulator directs, in writing, the licensed insurer to give the returns at another stated time—not later than the stated time.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 66).

223 CTP regulator may publish returns

The CTP regulator may make publicly available a copy of any return, and any document accompanying a return, given to the CTP regulator under section 222.

224 Audit of accounting records and compliance with guidelines

- (1) The CTP regulator may appoint an appropriately qualified person (an *appointed auditor*) to audit or inspect, and report to the CTP regulator on—
 - (a) the accounting records of a licensed insurer; or
 - (b) other records relating to the business or financial position of a licensed insurer; or
 - (c) the licensed insurer's compliance with each of the following:
 - (i) the CTP premium guidelines;
 - (ii) the medical and rehabilitation guidelines;
 - (iii) the business plan guidelines;
 - (iv) the CTP guidelines;
 - (v) any other guidelines made under this Act.
- (2) An appointed auditor is, in exercising a function under this section, entitled to inspect the accounting and other records of the licensed insurer.
- (3) An appointed auditor exercising a function under this section has qualified privilege in a proceeding for defamation for any statement that the appointed auditor makes orally or in writing in the course of exercising the function.
- (4) In this section:
accounting records, of a licensed insurer, include the following:
 - (a) invoices;
 - (b) receipts;
 - (c) orders for the payment of amounts;
 - (d) bills of exchange;

- (e) cheques;
- (f) promissory notes;
- (g) vouchers and other prime entry documents;
- (h) records relating to how a licensed insurer's third-party funds and other funds are invested;
- (i) the working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up.

225 Offence—licensed insurer to assist appointed auditor

A licensed insurer commits an offence if—

- (a) an appointed auditor is exercising a function under section 224 in relation to the licensed insurer; and
- (b) the licensed insurer does not provide all reasonable assistance requested by the auditor to allow the exercise of the function.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

226 Audit of licensed insurer's profitability

- (1) The CTP regulator may carry out an audit to work out the profitability of a licensed insurer and, in carrying out the audit, may exercise a function of an appointed auditor.
- (2) The CTP regulator must report on the audit, on a confidential basis, to APRA.

227 CTP regulator may ask for information etc

- (1) The CTP regulator may ask a licensed insurer to give the CTP regulator stated information about the business and financial position of—
- (a) the licensed insurer; or
 - (b) a corporation that is a related body corporate of the licensed insurer.

Note **Licensed insurer** includes a former licensed insurer (see s (5)).

- (2) The CTP regulator may ask a licensed insurer to give the CTP regulator a stated document kept by—
- (a) the licensed insurer; or
 - (b) a corporation that is a related body corporate of the licensed insurer.
- (3) The CTP regulator may ask a licensed insurer to make available for inspection by the CTP regulator a stated document kept by—
- (a) the licensed insurer; or
 - (b) a corporation that is a related body corporate of the licensed insurer.
- (4) To avoid any doubt, this section does not limit—
- (a) any other provision of this Act about the CTP regulator obtaining information; or
 - (b) how the CTP regulator may obtain information.
- (5) In this section:
- document** includes—
- (a) a return or account given under—
 - (i) the Corporations Act; and

- (ii) the *Insurance Act 1973* (Cwlth); and
- (b) a copy of, or extract from, a document.

information, about the business and financial position of an entity, includes—

- (a) financial information that is, or may be, relevant to the consideration by the CTP regulator of CTP premiums charged by the licensed insurer under this Act; and
- (b) information about—
 - (i) the cost of motor accident claims handling incurred by the licensed insurer; and
 - (ii) the settlement of motor accident claims by the licensed insurer; and
- (c) information about any other matter in relation to the licensed insurer.

licensed insurer includes a former licensed insurer.

228 How CTP regulator is to ask

- (1) A request by the CTP regulator under section 227 must—
 - (a) be made in writing and given to the licensed insurer or former licensed insurer; and
 - (b) state how the request must be complied with; and
 - (c) state when the request must be complied with.
- (2) A statement of how the request must be complied with may include a requirement that the licensed insurer, or former licensed insurer, give the CTP regulator a certificate of correctness.

(3) In this section:

certificate of correctness, for stated information or a stated document (or a copy of or extract from a stated document), means a certificate certifying the correctness of the information, document, copy or extract by any of the following:

- (a) a registered tax agent;
- (b) a registered company auditor;
- (c) an actuary approved by the CTP regulator.

registered company auditor—see the Corporations Act, section 9.

229 Offence—insurer to give information and documents

(1) A licensed insurer commits an offence if—

- (a) the CTP regulator makes a request of a licensed insurer, or a former licensed insurer, under section 227; and
- (b) the CTP regulator makes the request in the way mentioned in section 228; and
- (c) the insurer does not comply with the request.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

(2) It is a defence to a prosecution for an offence against this section if the defendant proves that it was not in the defendant's power to comply with the requirement.

230 Reports about insurers

(1) The CTP regulator may give the Minister reports about—

- (a) the level of compliance by insurers with—
 - (i) the requirements of this Act; and

- (ii) any conditions of licences under this Act (including any guidelines under this Act); and
 - (b) complaints made about insurers that relate to any matter to which this Act relates; and
 - (c) anything else about insurers that relates to any matter to which this Act relates.
- (2) A report may relate to—
 - (a) insurers generally; or
 - (b) a class of insurers; or
 - (c) a particular insurer.
- (3) A report may identify a particular insurer.
- (4) A report may include the observations and recommendations the CTP regulator considers appropriate.
- (5) The Minister may make a report public.

231 CTP regulator may apply for policy holder protection order

- (1) The CTP regulator may apply to the Supreme Court for an order (a *policy holder protection order*) to protect the interests of the holders of CTP policies issued by a licensed insurer or a former licensed insurer.
- (2) If the CTP regulator intends to apply for a policy holder protection order, the CTP regulator must give the following entities notice of its intention:
 - (a) APRA;
 - (b) ASIC.

- (3) Each of the following entities has a right to appear, and be heard, in a proceeding for a policy holder protection order:
 - (a) APRA;
 - (b) ASIC.
- (4) Before considering an application for a policy holder protection order, the Supreme Court may, if in its opinion it is desirable to do so, make an interim policy holder protection order that is expressed to have effect until the application is decided.
- (5) If the Supreme Court makes an interim policy holder protection order, the court may not require the CTP regulator to give an undertaking as to damages as a condition of making the order.

232 Court orders to protect policy holders

- (1) The Supreme Court may, on the application of the CTP regulator, make any order the Supreme Court considers necessary or desirable to protect the interests of the holders of CTP policies issued by a licensed insurer.

Note **Licensed insurer** includes a former licensed insurer (see s (6)).

- (2) However, the court may make an order for a licensed insurer only if—
 - (a) satisfied that the licensed insurer—
 - (i) is not, or may not be, able to meet the insurer's liabilities under the CTP policies; or
 - (ii) has acted, or may act, in a way that is prejudicial to the interests of the holders of the CTP policies; and
 - (b) the licensed insurer is not a corporation that is in the course of being wound up.

- (3) Without limiting subsection (1), the Court may make the following orders:
- (a) an order regulating the administration and payment of motor accident claims under the CTP policies;
 - (b) an order prohibiting or regulating the transfer or disposal of, or other dealing in, the assets of the licensed insurer;
 - (c) an order requiring the licensed insurer to discharge its liabilities under the CTP policies out of its assets and the assets of any related body corporate;
 - (d) an order appointing a receiver or receiver and manager, having the powers that the Court orders, of the property or part of the property of the licensed insurer or of any related body corporate.
- (4) If the Supreme Court makes an order under this section, the court may, on application by the CTP regulator or anyone else affected by the order, make another order revoking or amending the order.
- (5) To avoid any doubt, the powers of the Supreme Court under this section are in addition to any other powers of the Supreme Court.
- (6) In this section:
- licensed insurer* includes a former licensed insurer.

233 Offence—contravene court order

A person commits an offence if—

- (a) a court order under section 232 is in force for the person; and
- (b) the person contravenes the order.

Maximum penalty: 20 penalty units, imprisonment for 6 months or both.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

234 Offence—insurer to tell CTP regulator about grounds for suspension

A person commits an offence if—

- (a) the person is a licensed insurer or a former licensed insurer; and
- (b) an event or thing mentioned in section 195 (Grounds for suspension—other grounds) happens, other than an event or thing mentioned in section 195 (e), (m) or (p); and
- (c) the person does not tell the CTP regulator about the event or thing, in writing, within 21 days after the event or thing happens.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

235 Offence—insurer to tell CTP regulator of decrease in issued capital

A person commits an offence if—

- (a) the person is a licensed insurer; and
- (b) there is, or is to be, a decrease in the issued capital of the insurer; and
- (c) the person does not tell the CTP regulator about the decrease or proposed decrease, in writing, within 21 days after the decrease or proposal.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

236 Offence—insurer to tell CTP regulator of bidder’s statement or target’s statement

- (1) A person commits an offence if the person—
- (a) is a licensed insurer; and
 - (b) receives a bidder’s statement or target’s statement; and
 - (c) does not tell the CTP regulator about the statement, in writing, within 21 days after the licensed insurer receives the statement.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

- (2) In this section:

bidder’s statement—see the Corporations Act, section 9.

target’s statement—see the Corporations Act, section 9.

237 Only CTP regulator may issue proceeding against licensed insurer

A proceeding against a licensed insurer for failure to comply with the terms of the insurer’s licence, or this Act, may only be issued by the CTP regulator.

Part 5.8 Insolvent insurers

238 Definitions—pt 5.8

In this part:

CTP policy issued by an insolvent insurer means—

- (a) a CTP policy issued by an insolvent insurer, whether before or after the insurer became an insolvent insurer; or
- (b) a CTP policy, issued by a person other than an insolvent insurer, for which an insolvent insurer has (whether before or after becoming an insolvent insurer) entered into a contract or an arrangement under which the insolvent insurer is (or would be but for its dissolution) liable to indemnify the person against the person's liability under the policy.

insolvent insurer means a licensed insurer, or former licensed insurer, for which an insolvent insurer declaration is in force.

insolvent insurer declaration—see section 240.

liquidator includes a provisional liquidator.

239 Liquidators

- (1) In this part, a reference to a liquidator or provisional liquidator includes a reference to a liquidator or provisional liquidator appointed outside the ACT.
- (2) The liquidator of an insolvent insurer may exercise its functions inside and outside the ACT.

240 Insolvent insurer declarations

- (1) The Minister may declare (an *insolvent insurer declaration*) a licensed insurer, or former licensed insurer, to be an insolvent insurer if—
 - (a) the Minister is satisfied that—
 - (i) a liquidator or provisional liquidator has been appointed for the licensed insurer or former licensed insurer; or
 - (ii) the licensed insurer, or former licensed insurer, has been dissolved; and
 - (b) the Minister has consulted—
 - (i) APRA; and
 - (ii) ASIC; and
 - (c) the Treasurer approves the making of the declaration.
- (2) An insolvent insurer declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

241 Nominal defendant is insurer if CTP insurer insolvent

- (1) If a CTP insurer for a CTP policy becomes an insolvent insurer, the nominal defendant becomes the insurer for the policy.
- (2) However, subsection (1) does not apply to a CTP policy that is transferred to a licensed insurer (other than an insolvent insurer).

Note Transfer of CTP policies is dealt with in pt 5.6.

242 Nominal defendant may recover from insolvent insurer

- (1) If a CTP insurer becomes an insolvent insurer, any costs reasonably incurred by the nominal defendant for motor accident claims under a CTP policy 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 costs that become the debts of the insolvent insurer under subsection (1) have the same order of priority in the winding-up of the insolvent insurer as they would if the nominal defendant were the CTP insured person under the CTP policy.
- (3) If the motor accident 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.

Note An amount recovered under this section must be paid into the nominal defendant fund (see s 163B).

243 Offence—liquidator to give motor accident claims to nominal defendant

The liquidator of an insolvent insurer commits an offence if the liquidator—

- (a) receives a motor accident claim about a CTP policy issued by the insolvent insurer; and
- (b) does not give the motor accident claim to the nominal defendant.

Maximum penalty: 20 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

244 Offence—liquidator to give information etc to nominal defendant

- (1) The liquidator of an insolvent insurer commits an offence if—
 - (a) the nominal defendant asks the liquidator in writing to give the nominal defendant all documents, or information, in the liquidator's possession relating to CTP policies issued by the insolvent insurer, or motor accident claims, or judgments, made in relation to the CTP policies; and

- (b) the liquidator does not give the documents or information to the nominal defendant within 45 days after the day the nominal defendant asks for them.

Maximum penalty: 20 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

- (2) Subsection (1) does not apply to a liquidator if—
 - (a) before the end of the 45-day period, the liquidator—
 - (i) tells the nominal defendant in writing that it is not reasonably practicable to give the nominal defendant the documents or information within the period; and
 - (ii) explains why it is not reasonably practicable; and
 - (b) the nominal defendant extends the time for providing the documents or information; and
 - (c) the liquidator provides the documents or information to the nominal defendant within the extended time.
- (3) A regulation may prescribe other circumstances when subsection (1) does not apply to a liquidator.

245 Offence—liquidator to allow inspection of documents

- (1) The liquidator of an insolvent insurer commits an offence if—
 - (a) a person authorised by the Minister asks the liquidator to make available for inspection by the person all documents in the liquidator's possession relating to—
 - (i) CTP policies issued by the insolvent insurer; or
 - (ii) motor accident claims or judgments made in relation to the CTP policies; and

- (b) the liquidator does not make the documents available to the person within 45 days after the day the person asks for them.

Maximum penalty: 20 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

- (2) Subsection (1) does not apply to a liquidator if—
 - (a) before the end of the 45-day period, the liquidator—
 - (i) in writing, tells the person authorised that it is not reasonably practicable to give the person the documents within the period; and
 - (ii) explains why it is not reasonably practicable; and
 - (b) the person extends the time for providing the documents; and
 - (c) the liquidator makes the documents available to the person within the extended time.
- (3) A regulation may prescribe other circumstances when subsection (1) does not apply to a liquidator.

246 Borrowing for nominal defendant fund

The nominal defendant may borrow the amounts that the nominal defendant considers necessary to satisfy motor accident claims and judgments for CTP policies issued by an insolvent insurer if the nominal defendant would not otherwise be able to satisfy the claims and judgments from the nominal defendant fund.

247 Nominal defendant may intervene in legal proceeding

- (1) This section applies if—
 - (a) the liquidator of an insolvent insurer applies to a court for directions for a matter arising under the winding-up; or

- (b) the exercise, by the liquidator of an insolvent insurer, of any of the liquidator's functions, whether under this part or not, is challenged, reviewed or called into question in a proceeding before a court; or
 - (c) another matter that may affect the operation of this part is raised in a proceeding before a court.
- (2) The nominal defendant may intervene at any stage of the proceeding.
- (3) If the nominal defendant intervenes, the nominal defendant becomes a party to the proceeding and has all the rights of a party to the proceeding including the right to appeal against any order, judgment or direction of the court.
- (4) The nominal defendant is entitled to be paid, out of the nominal defendant fund, all the costs and expenses incurred by the nominal defendant in exercising a function under this section.

248 Nominal defendant may take legal proceeding

- (1) This section applies to a proceeding if—
 - (a) the nominal defendant may take the proceeding for a person who is entitled (or who would be entitled but for the dissolution of the insolvent insurer), under a CTP policy issued by an insolvent insurer, to be indemnified against a motor accident claim or judgment arising from or relating to the CTP policy; and
 - (b) the proceeding is for, or for enforcing or securing compliance with, any provision under this part or another Act.
- (2) The nominal defendant is taken to represent sufficiently the interests of the public and may take the proceeding in its own name.

- (3) The nominal defendant is entitled to be paid, out of the nominal defendant fund, all the costs and expenses incurred by the nominal defendant in exercising the nominal defendant's functions under this section.

Chapter 6 Enforcement

Part 6.1 Enforcement—general

249 Definitions—ch 6

In this chapter:

authorised person—see the *Road Transport (General) Act 1999*, dictionary.

connected—a thing is **connected** with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

Part 6.2 Powers of authorised people

250 Power to enter premises

- (1) For this Act, an authorised person may—
 - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (b) at any time, enter premises with the occupier's consent; or
 - (c) enter premises in accordance with a search warrant.

Note Authorised people are appointed under the *Road Transport (General) Act 1999*, s 19.

- (2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) In this section:

at any reasonable time includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment).

251 Production of identity card

An authorised person must not remain at premises entered under this chapter if the authorised person does not produce his or her identity card when asked by the occupier.

Note Identity cards for authorised people are provided for in the *Road Transport (General) Act 1999*, s 20.

252 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter premises under section 250 (1) (b), an authorised person must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this chapter may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this chapter may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.

- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this chapter if—
- (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

253 General powers on entry to premises

- (1) An authorised person who enters premises under this chapter may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:
- (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples;
 - (d) take photographs, films, or audio, video or other recordings;
 - (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this chapter.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

254 Power to seize things

- (1) An authorised person who enters premises under this chapter with the occupier's consent may seize anything at the premises if—
 - (a) the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this chapter may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this chapter (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
 - (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) The powers of an authorised person under subsection (3) are additional to any powers of the authorised person under subsection (1) or subsection (2) or any other territory law.
- (5) Having seized a thing, an authorised person may remove the thing from the premises where it was seized (the *place of seizure*) to another place.

Part 6.3 Search warrants

255 Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and
 - (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises; or
 - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—
 - (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this chapter; and
 - (b) the offence for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and

- (d) the hours when the premises may be entered; and
- (e) the date, within 7 days after the day of the warrant's issue, the warrant ends.

256 Warrants—application made other than in person

- (1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
 - (a) the magistrate must tell the authorised person—
 - (i) the terms of the warrant; and
 - (ii) the date and time the warrant was issued; and
 - (b) the authorised person must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.

- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this chapter.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—
 - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

257 Search warrants—announcement before entry

- (1) An authorised person must, before anyone enters premises under a search warrant—
 - (a) announce that the authorised person is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.

- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the authorised person or any person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

258 Details of search warrant to be given to occupier etc

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

259 Occupier entitled to be present during search etc

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
- (a) to do so would impede the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Part 6.4 Return and forfeiture of things seized

260 Receipt for things seized

- (1) As soon as practicable after an authorised person seizes a thing under this chapter, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 254 (Power to seize things).
- (3) A receipt under this section must include the following:
 - (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the authorised person's name, and how to contact the authorised person;
 - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

261 Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
 - (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;

- (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
 - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

262 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this chapter may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

263 Return of things seized

A thing seized under this chapter must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if—

- (a) an infringement notice for an offence relating to the thing is not served on the owner within 1 year after the day of the seizure and—
 - (i) a prosecution for an offence relating to the thing is not started within the 1-year period; or
 - (ii) a prosecution for an offence relating to the thing is started within the 1-year period but the court does not find the offence proved; or
- (b) an infringement notice for an offence relating to the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
 - (i) a prosecution for an offence relating to the thing is not started within the 1-year period; or
 - (ii) a prosecution for an offence relating to the thing is started within the 1-year period but the court does not find the offence proved; or
- (c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Road Transport (General) Act 1999*, section 51 (Disputing liability for infringement notice offence) and—
 - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under section 51 that liability is disputed; or

- (ii) an information is laid in the Magistrates Court against the person for the offence within the 60-day period, but the Magistrates Court does not find the offence proved; or
- (d) before the thing is forfeited to the Territory under section 264, the chief executive—
 - (i) becomes satisfied that there has been no offence against this Act with which the thing was connected; or
 - (ii) decides not to prosecute or serve an infringement notice for the offence.

264 Forfeiture of seized things

- (1) This section applies if—
 - (a) anything seized under this chapter has not been returned under section 263; and
 - (b) an application for disallowance of the seizure under section 265—
 - (i) has not been made within 10 days after the day of the seizure; or
 - (ii) has been made within the 10-day period, but the application has been refused or withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
 - (a) it is forfeited to the Territory; and
 - (b) it may be sold, destroyed or otherwise disposed of as the chief executive directs.

265 Application for order disallowing seizure

- (1) A person claiming to be entitled to anything seized under this chapter may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the chief executive.
- (3) The chief executive is entitled to appear as respondent at the hearing of the application.

266 Order for return of seized thing

- (1) This section applies if a person claiming to be entitled to anything seized under this chapter applies to the Magistrates Court under section 265 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if satisfied that—
 - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
 - (b) the thing is not connected with an offence against this Act; and
 - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
 - (a) an order directing the chief executive to return the thing to the applicant or to someone else who appears to be entitled to it;

- (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
- (c) an order about the payment of costs in relation to the application.

Part 6.5 Enforcement—miscellaneous

267 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this chapter, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this chapter, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this chapter in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

268 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this chapter by an authorised person or a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied that it is just to make the order in the circumstances of the particular case.

- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Chapter 7 Information collection and secrecy

269 Information to be provided by licensed insurers

- (1) A licensed insurer must give the CTP regulator—
- (a) periodic returns, as prescribed by regulation, containing the information prescribed by regulation; and
 - (b) information about claims against the insurer that is prescribed by regulation, or that the CTP regulator requires by written notice to the insurer; and
 - (c) other information that is relevant to the administration of this Act that is prescribed by regulation, or that the CTP regulator requires by written notice to the insurer.

Example

An insurer may be required to provide—

- (a) details of motor vehicle accident claims against the insurer, and the dates when notice of the claims were received by the insurer; and
- (b) information about the claimants; and
- (c) information about whether liability was admitted by the insurer, when liability was admitted or denied and, if liability was admitted, the extent to which liability was admitted; and
- (d) information about the rehabilitation services made available to the claimant and the extent to which the rehabilitation services were used by the claimant; and
- (e) information about the costs of the insurer on claims, and how the costs are made up.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The information must be provided by means of systems for the processing and transmission of information that the CTP regulator requires by written notice to the insurer.

Note If a form is approved under s 276 for the provision of information under this section, the form must be used.

- (3) A person commits an offence if the person—
- (a) is a licensed insurer; and
 - (b) must give the CTP regulator a periodic return or information under this section; and
 - (c) does not give the periodic return or information as required under this section.

Maximum penalty: 150 penalty units.

- (4) If a court convicts a licensed insurer of an offence against this section, the court may, by order, cancel the insurer's licence.

270 CTP claims register

- (1) The CTP regulator must keep a register of compulsory third-party insurance motor accident claims (the *CTP claims register*).
- (2) The CTP claims register must contain information provided under this Act by insurers that the CTP regulator considers appropriate for inclusion in the CTP claims register.
- (3) The information contained in the CTP claims register must be accessible to licensed insurers and others to the extent that the CTP regulator 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 allow the insurer to be identified.

271 Secrecy

(1) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

divulge includes communicate.

person to whom this section applies means a person who—

- (a) is or has been—
 - (i) a member of the CTP premium board; or
 - (ii) a licensed insurer; or
 - (iii) an actuary engaged by the CTP regulator for this Act; or
- (b) exercises, or has exercised, a function under this Act.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

(2) A person to whom this section applies commits an offence if—

- (a) the person—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about someone else; or
- (b) the person—
 - (i) does something that divulges protected information about someone else; and

- (ii) is reckless about whether—
 - (A) the information is protected information about someone else; and
 - (B) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the record is made, or the information is divulged—
 - (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
 - (c) under the insurance industry deed; or
 - (d) in a court proceeding.
- (4) Subsection (2) does not apply to the divulging of protected information about someone with the person's consent.
- (5) Subsection (2) does not apply to the divulging of protected information by an insurer only to another insurer.

Chapter 8 Miscellaneous

272 **Application to Territory and Commonwealth motor vehicles**

- (1) A requirement under this Act for a CTP policy does not apply in relation to a motor vehicle owned by the Territory, the Commonwealth or a territory or commonwealth authority.
- (2) However, the Territory, the Commonwealth or a territory or commonwealth authority is, for a motor vehicle for which a CTP policy is not in force, under the same liabilities, and has the same rights, as a licensed insurer would be under, or have, if the insurer had issued a CTP policy for the vehicle.
- (3) In this section:

commonwealth authority means a body, whether or not incorporated, established under a Commonwealth Act.

275 **Review of Act**

- (1) The Minister must review the operation of this Act as soon as practicable after the end of its 3rd year of operation.
- (2) The Minister must present a report on the review to the Legislative Assembly within 3 months after the day the review is started.
- (3) In reviewing the Act, the Minister must have regard to—
 - (a) how effectively the scheme under the Act provides reduced premiums for compulsory third-party insurance policies for motor vehicles; and
 - (b) any reform to any scheme providing for compulsory third-party insurance for motor vehicles implemented in other jurisdictions in Australia; and

- (c) the impact of the changes on the recovery to health, well-being and work of the claimant.
- (4) In reviewing the Act, the Minister may have regard to anything else that the Minister considers relevant.
- (5) This section expires 5 years after the day it commences.

276 Approved forms

- (1) The chief executive may approve forms for this Act.
- (2) If the chief executive approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

277 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may deal with the CTP premium board.

Note The CTP premium board is established in s 47.

- (3) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

Note 1 Penalties imposed under this Act must be paid into the nominal defendant fund (see s 163B).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Chapter 9 Transitional

Part 9.1 Transitional—Road Transport (Third-Party Insurance) Act 2008

285 Transitional—s 269

- (1) For section 269, claims against the insurer includes claims arising before the commencement of this Act.
- (2) This section expires 3 years after the commencement day.

Part 9.2 Transitional—Road Transport (Third-Party Insurance) Amendment Act 2009

288 Definitions—pt 9.2

In this part:

commencement day means the day the *Road Transport (Third-Party Insurance) Amendment Act 2009*, section 3 commences.

former CTP provisions means the *Road Transport (Third-Party Insurance) Act 2008* as in force immediately before the commencement day.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 Under the *Road Transport (Third-Party Insurance) Regulation 2008*, s 101, the *Road Transport (General) Act 1999*, part 10 (repealed) as in force immediately before the commencement day continues to apply in relation to trader's plates as if the *Road Transport (Third-Party Insurance) Act 2008* had not been enacted.

third-party policy means an insurance policy issued under the former CTP provisions.

289 Transitional—personal injury claims

- (1) This section applies to a third-party policy, for a motor vehicle with a valid trader's plate attached, that was in force immediately before the commencement day.
- (2) The third-party policy continues in force until the earlier of the following:
 - (a) the policy is replaced by a CTP insurance policy;

- (b) the motor vehicle no longer has a valid trader's plate attached.
- (3) If personal injury arises out of a motor vehicle accident that happened before the commencement day, a claim for the personal injury must be dealt with as if the *Road Transport (Third-Party Insurance) Amendment Act 2009* had not been enacted.
- (4) To remove any doubt, if personal injury arises out of a motor vehicle accident that happens on or after the commencement day, a claim for the personal injury must be dealt with under this Act, even if the accident happens while a third-party policy under the former CTP provisions is in force in relation to the risk.

290 Expiry—pt 9.2

This part expires 1 year after the commencement day.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- corporation
- Corporations Act
- financial year
- occupational discipline order
- person
- State
- under.

Note 3 If a word or expression is defined in an Act (but not a regulation or another publication) included in the road transport legislation, the definition applies to each use of the word or expression in other road transport legislation unless the contrary intention appears (see *Road Transport (General) Act 1999*, s 8).

appointed auditor, for part 5.7 (Supervision of licensed insurers)—see section 224.

APRA means the Australian Prudential Regulation Authority established under the *Australian Prudential Regulation Authority Act 1998* (Cwlth), section 7.

ASIC means the Australian Securities and Investments Commission under the *Australian Securities and Investments Commission Act 2001* (Cwlth).

assessment of damages notice, for division 4.6.2 (Rehabilitation services)—see section 128.

authorised person, for chapter 6 (Enforcement)—see section 249.

business plan—see section 211.

business plan guidelines—see section 216.

claimant, for a motor accident claim—see section 78.

compliance notice, for part 4.10 (Judgment for noncompliance with time limits)—see section 158.

complying notice of claim, for chapter 4 (Motor accident claims)—see section 76.

compulsory conference, for chapter 4 (Motor accident claims)—see section 136.

compulsory third-party policy—see section 18.

connected, for chapter 6 (Enforcement)—see section 249.

contribution notice, for chapter 4 (Motor accident claims)—see section 93.

contributor, for a motor accident claim, for chapter 4 (Motor accident claims)—see section 93.

costs, for part 4.11 (CTP insurer and nominal defendant may recover costs incurred)—see section 164.

court, for a motor accident claim, for chapter 4 (Motor accident claims)—see section 76.

credit card includes a debit card.

CTP claims register—see section 270.

CTP insurance business, for a licensed insurer—see section 11.

CTP insured person—see section 16.

CTP insurer—see section 23.

CTP insurer licence—see section 178.

CTP policy—see section 18.

CTP policy issued by an insolvent insurer, for part 5.8 (Insolvent insurers)—see section 238.

CTP premium, for a CTP policy—see section 37.

CTP premium board—see section 47.

CTP premium guidelines—see section 39.

CTP regulator—see section 14.

drive a vehicle includes—

- (a) be in control of the steering, movement or propulsion of the vehicle; and
- (b) if the vehicle is a trailer—draw or tow the vehicle; and
- (c) if the vehicle can be ridden—ride the vehicle.

driver, of a vehicle, means the person who is driving the vehicle.

enforcing party, for part 4.10 (Judgment for noncompliance with time limits)—see section 158.

former licensed insurer, for chapter 5 (Licensing of insurers)—see section 179.

ground for occupational discipline—see section 200.

injured person—see section 7.

insolvent insurer, for part 5.8 (Insolvent insurers)—see section 238.

insolvent insurer declaration, for part 5.8 (Insolvent insurers)—see section 240.

insurance industry deed—see section 9.

insured motor vehicle—see section 15.

insured person, for a motor accident claim—see section 80.

insurer—

- (a) for chapter 3 (Early payment for treatment of motor accident injuries)—see section 68; or
- (b) for chapter 4 (Motor accident claims)—see section 81.

issue, of a CTP policy, includes the issue of a renewal of the policy.

late party, for part 4.10 (Judgment for noncompliance with time limits)—see section 158.

later respondent, for a motor accident claim, for chapter 4 (Motor accident claims)—see section 91.

licensed insurer—

(a) see section 179; or

(b) for part 5.4 (Occupational discipline)—see section 198.

liquidator, for part 5.8 (Insolvent insurers)—see section 238.

mandatory final notice—see section 141.

mandatory final offer, for chapter 4 (Motor accident claims)—see section 141.

market share, of a licensed insurer, for part 5.7 (Supervision of licensed insurers)—see section 216.

medical and rehabilitation guidelines—see section 135.

medical expenses—see section 71.

medical treatment, for chapter 4 (Motor accident claims)—see section 76.

motor accident—see section 7.

motor accident claim, for a motor accident—see section 77.

motor accident medical report, for a motor accident—see section 70.

motor accident notification form, for a motor accident—see section 69.

motor vehicle—see the *Road Transport (General) Act 1999*, dictionary.

Note The *Road Transport (General) Act 1999*, dict, defines **motor vehicle** as a vehicle built to be propelled by a motor that forms part of the vehicle.

nominal defendant—see section 13.

nominal defendant fund—see section 163B.

notice of claim, for a motor accident claim, for chapter 4 (Motor accident claims)—see section 84.

occupier, for chapter 6 (Enforcement)—see section 249.

offence, for chapter 6 (Enforcement)—see section 249.

party, for a motor accident claim, for chapter 4 (Motor accident claims)—see section 76.

personal injury—see section 6.

possession, of a motor vehicle—see section 14.

provided rehabilitation services, for division 4.6.2 (Rehabilitation services)—see section 125.

registered motor vehicle—see section 12.

registered operator—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

rehabilitation, for chapter 4 (Motor accident claims)—see section 123.

rehabilitation services—see section 124.

related body corporate—see the Corporations Act, section 9 (Dictionary).

relevant claim information, for part 4.3 (Obligations on parties to give documents and information)—see section 103.

relevant notice claim, for part 4.10 (Judgment for noncompliance with time limits)—see section 159.

required document, for part 4.3 (Obligations on parties to give documents and information)—see section 102.

required thing, for part 4.10 (Judgment for noncompliance with time limits)—see section 157.

respondent, for a motor accident claim, for chapter 4 (Motor accident claims)—see section 79.

respondents' claim manager, for a motor accident claim, for chapter 4 (Motor accident claims)—see section 92.

response, for a motor accident claim, for chapter 4 (Motor accident claims)—see section 90.

responsible person, for a vehicle—see the *Road Transport (General) Act 1999*, section 10 and section 11.

ride, for the rider of a motorbike or an animal-drawn vehicle, includes be in control of the vehicle.

rider, of a vehicle that can be ridden, means the person who is riding the vehicle.

road means an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles, but does not include an area that would otherwise be a road so far as a declaration under the *Road Transport (General) Act 1999*, section 12 (Power to include or exclude areas in road transport legislation) declares that this Act does not apply to the area.

road related area—

- (a) means—
- (i) an area that divides a road; or
 - (ii) a footpath or nature strip adjacent to a road; or
 - (iii) an area that is open to the public and is designated for use by cyclists or animals; or

- (iv) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles; or
 - (v) a shoulder of a road; or
 - (vi) any other area that is open to or used by the public so far as a declaration under the *Road Transport (General) Act 1999*, section 12 (Power to include or exclude areas in road transport legislation) declares that this Act applies to the area; but
- (b) does not include an area that would otherwise be a road related area so far as a declaration under that section declares that this Act does not apply to the area.

road transport authority means the Australian Capital Territory Road Transport Authority.

Note The chief executive of the department responsible for the *Road Transport (General) Act 1999* is the road transport authority (see *Road Transport (General) Act 1999*, s 16).

road transport legislation—see the *Road Transport (General) Act 1999*, section 6.

third-party funds, of a licensed insurer, for part 5.7 (Supervision of licensed insurers)—see section 219.

trader's plate—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

trailer means a vehicle being towed, or built to be towed, by a motor vehicle, but does not include a motor vehicle being towed.

unidentified motor vehicle—see section 62.

uninsured motor vehicle—see section 60.

unregistered vehicle permit—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

use, a motor vehicle—see section 8.

UVP liability contribution—see section 163D.

valid trader's plate means a trader's plate that—

- (a) is issued by the road transport authority to a person; and
- (b) the road transport authority has not required the person to return to the authority under the *Road Transport (Vehicle Registration) Regulation 2000*—
 - (i) section 89 (Recall of trader's plates); or
 - (ii) section 101 (Return of trader's plate); and
- (c) has not been surrendered to the road transport authority under the *Road Transport (Vehicle Registration) Regulation 2000*, section 102 (Surrender of trader's plates).

Endnotes

1 About the endnotes

Endnotes

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Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Road Transport (Third-Party Insurance) Act 2008 A2008-1

notified LR 26 February 2008

s 1, s 2 commenced 26 February 2008 (LA s 75 (1))

remainder commenced 1 October 2008 (s 2 as am by A2008-39 s 4)

as amended by

Road Transport (Third-Party Insurance) Amendment Act 2008 A2008-39

notified LR 22 August 2008

s 1, s 2 commenced 22 August 2008 (LA s 75 (1))

remainder commenced 23 August 2008 (s 2)

as modified by

Road Transport (Third-Party Insurance) Regulation 2008 SL2008-37 s 103

notified LR 25 August 2008

s 1, s 2 commenced 25 August 2008 (LA s 75 (1))

s 103 commenced 1 October 2008 (s 2 and see A2008-1 s 2 (as am by A2008-39 s 4))

as amended by

Road Transport (Third-Party Insurance) Amendment Act 2008 (No 2) A2008-54

notified LR 16 December 2008

s 1, s 2 commenced 16 December 2008 (LA s 75 (1))

remainder commenced 17 December 2008 (s 2)

Road Transport (Third-Party Insurance) Amendment Act 2009 A2009-16

notified LR 30 June 2009

s 1, s 2 commenced 30 June 2009 (LA s 75 (1))

remainder commenced 5 July 2009 (s 2)

Endnotes

3 Amendment history

Road Transport (Mass, Dimensions and Loading) Act 2009 A2009-22 sch 1 pt 1.11

notified LR 3 September 2009

s 1, s 2 commenced 3 September 2009 (LA s 75 (1))

sch 1 pt 1.11 commenced 3 March 2010 (s 2 and LA s 79)

4 Amendment history

Name of Act

s 1 am A2009-22 amdt 1.27

Commencement

s 2 sub A2008-39 s 4
om LA s 89 (4)

What is a *registered motor vehicle*?

s 12 **orig s 12**
om A2009-16 s 4
pres s 12
(prev s 30) reloc and renum as s 12 A2009-16 s 12

Who is the *nominal defendant*?

s 13 hdg (prev s 59 hdg) sub A2009-16 s 22
s 13 **orig s 13**
om A2009-16 s 4
pres s 13
(prev s 59) reloc and renum as s 13 A2009-16 s 23

Who is the *CTP regulator*?

s 14 hdg (prev s 273 hdg) sub A2009-16 s 44
s 14 **orig s 14**
om A2009-16 s 4
pres s 14
(prev s 273) am A2009-16 s 45
reloc and renum as s 14 A2009-16 s 46

What is an *insured motor vehicle*?

s 15 sub A2009-16 s 5

Offence—using uninsured motor vehicle on road or road related area

s 17 am A2009-16 s 6, amdt 1.1

What is insured under a CTP policy?

s 19 sub A2009-16 s 7

Offence—using uninsured motor vehicle on road or road related area

s 22 am A2009-16 s 8, s 9

Who is the CTP insurer?

s 23 sub A2009-16 s 10

CTP policy not affected by transfer etc of vehicle or trader's plate

s 26 sub A2009-16 s 11

Selecting when applying for trader's platess 30 **orig s 30**
reloc and renum as s 12 A2009-16 s 12
pres s 30
ins A2009-16 s 13**CTP policy in effect while insurer on risk—registered motor vehicles**

s 32 hdg sub A2009-16 s 14

s 32 am A2009-16 s 15

Insurer on risk—period of registration

s 33 am A2009-16 ss 16-19

CTP policy takes effect on attachment of trader's plate

s 34A ins A2009-16 s 20

CTP policy in effect while insurer on risk—trader's plates

s 34B ins A2009-16 s 20

CTP policy cancellation—registered vehicles

s 36 sub A2009-16 s 21

CTP policy cancellation—trader's plates

s 36A ins A2009-16 s 21

Nominal defendant liable—unregistered vehicle permitss 59 **orig s 59**
reloc and renum as s 13 A2009-16 s 23
pres s 59
ins A2009-16 s 24**What is an *uninsured motor vehicle*?**

s 60 am A2009-16 s 25

Nominal defendant may deal with motor accident claim

s 64 reloc and renum as s 83A A2009-16 s 27

Nominal defendant to pay motor accident claims from nominal defendant fund

s 65 reloc and renum as s 163A A2009-16 s 30

Nominal defendant fund

s 66 reloc and renum as s 163B A2009-16 s 33

Collections for nominal defendant fund

s 67 reloc and renum as s 163C A2009-16 s 34

Endnotes

3 Amendment history

Nominal defendant may deal with motor accident claim

s 83A (prev s 64) am A2009-16 s 26
reloc and renum as s 83A A2009-16 s 27

Time for giving notice of claim—CTP insurer

s 85 am A2008-54 s 4

Time for giving notice of claim—nominal defendant

s 86 am A2008-54 s 5

Noncomplying notice of claim may be complying notice of claim

s 95 am A2008-54 ss 6-8

Offence—failure to give document or information

s 112 am A2009-16 amdt 1.8

Offence—false or misleading statements

s 116 am A2009-16 amdt 1.8

Mandatory final offers

s 141 am A2009-16 s 35

Working out costs for mandatory final offers

s 144 sub A2009-16 s 36

Nominal defendant fund

pt 4.10A hdg ins A2009-16 s 37

Nominal defendant to pay motor accident claims from nominal defendant fund

s 163A (prev s 65) am A2009-16 s 28, s 29
reloc and renum as s 163A A2009-16 s 30

Nominal defendant fund

s 163B (prev s 66) am A2009-16 s 31, s 32
reloc and renum as s 163B A2009-16 s 33

Collections for nominal defendant fund

s 163C (prev s 67) reloc and renum as s 163C A2009-16 s 34

CTP regulator must decide contribution for nominal defendant liability

s 163D ins A2009-16 s 37

UVP liability contribution to be paid with unregistered vehicle permit

s 163E ins A2009-16 s 37

CTP insurer may recover costs if no authority to use vehicle

s 169 am A2009-16 s 38

Insurer may recover costs if motor vehicle defective

s 172 am A2009-16 amdt 1.8

Insurer may recover costs if fraud

s 173 am A2009-16 amdt 1.8

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- Nominal defendant may recover costs from responsible person or driver**
s 174 sub A2009-16 s 39
- Offence—unlicensed insurer issues CTP policy**
s 180 am A2009-16 amdt 1.8
- Offence—contravening licence condition**
s 188 am A2009-16 s 40
- Offence—unlicensed insurer contravening licence condition**
s 190 am A2009-16 amdt 1.8
- Grounds for licence suspension—contraventions**
s 194 am A2009-16 s 41, s 42
- Offence—issuing CTP policy if licence suspended**
s 197 am A2009-16 amdt 1.8
- Occupational discipline**
pt 5.4 hdg sub A2009-16 s 43
- Meaning of *licensed insurer*—pt 5.4**
s 198 sub A2009-16 s 43
- CTP regulator may choose occupational discipline instead of prosecution**
s 199 sub A2009-16 s 43
- Grounds for occupational discipline**
s 200 sub A2009-16 s 43
- Applications to ACAT for occupational discipline**
s 201 sub A2009-16 s 43
- Occupational discipline orders**
s 202 sub A2009-16 s 43
- Offence—licensed insurer to keep accounts**
s 221 am A2009-16 amdt 1.8
- Offence—licensed insurer to provide returns**
s 222 am A2009-16 amdt 1.8
- Offence—licensed insurer to assist appointed auditor**
s 225 am A2009-16 amdt 1.8
- Offence—insurer to give information and documents**
s 229 am A2009-16 amdt 1.8
- Offence—contravene court order**
s 233 am A2009-16 amdt 1.8
- Offence—insurer to tell CTP regulator about grounds for suspension**
s 234 am A2009-16 amdt 1.8

Endnotes

3 Amendment history

Offence—insurer to tell CTP regulator of decrease in issued capital

s 235 am A2009-16 amdt 1.8

Offence—insurer to tell CTP regulator of bidder’s statement or target’s statement

s 236 am A2009-16 amdt 1.8

Nominal defendant may recover from insolvent insurer

s 242 am A2009-16 amdt 1.8

Offence—liquidator to give motor accident claims to nominal defendant

s 243 am A2009-16 amdt 1.8

Offence—liquidator to give information etc to nominal defendant

s 244 am A2009-16 amdt 1.8

Offence—liquidator to allow inspection of documents

s 245 am A2009-16 amdt 1.8

General powers on entry to premises

s 253 am A2009-16 amdt 1.8

Return of things seized

s 263 am A2009-16 amdt 1.2, amdt 1.3

Who is the CTP regulator?

s 273 reloc and renum as s 14 A2009-16 s 46

Delegation of CTP regulator’s functions

s 274 om A2009-16 s 47

Review of Act

s 275 exp 1 October 2013 (s 275 (5))

Regulation-making power

s 277 am A2009-16 s 48, s 49, amdt 1.8

Legislation amended-sch 1

s 278 om LA s 89 (3)

Legislation repealed

s 279 om LA s 89 (3)

Transitional—Road Transport (Third-Party Insurance) Act 2008

pt 9.1 hdg ins A2009-16 s 50
exp 1 October 2011 (s 285 (2))

Definitions—pt 9.1

s 280 hdg sub A2009-16 s 51
s 280 am A2009-16 s 52
exp 1 October 2009 (s 287)

Transitional—personal injury claims

s 281 exp 1 October 2009 (s 287)

Transitional—nominal defendant

s 282 exp 1 October 2009 (s 287)

Transitional—premiums

s 283 exp 1 October 2009 (s 287)

Transitional—authorised insurers

s 284 exp 1 October 2009 (s 287)

Transitional—s 269s 285 exp 1 October 2011 (s 285 (2))**Transitional regulations**s 286 am A2009-16 s 53
exp 1 October 2009 (s 287)**Modification—Road Transport (Public Passenger Services) Act 2001**s 286A ins as mod SL2008-37 s 103
mod lapsed 5 July 2009 (SL2008-37 s 103 om by A2009-16
amdt 2.15)**Expiry—pt 9.1**s 287 hdg sub A2009-16 s 54
s 287 am A2009-16 s 55
exp 1 October 2009 (s 287)**Transitional—Road Transport (Third-Party Insurance) Amendment Act 2009**pt 9.2 hdg ins A2009-16 s 56
exp 5 July 2010 (s 290)**Definitions—pt 9.2**s 288 exp 5 July 2010 (s 290)
def **commencement day** ins A2009-16 s 56
def **former CTP provisions** ins A2009-16 s 56
def **third-party policy** ins A2009-16 s 56**Transitional—personal injury claims**s 289 ins A2009-16 s 56
exp 5 July 2010 (s 290)**Expiry—pt 9.2**s 290 ins A2009-16 s 56
exp 5 July 2010 (s 290)**Consequential amendments**

sch 1 om LA s 89 (3)

Dictionarydict am A2009-16 s 57
def **CTP regulator** am A2009-16 amdt 1.4
def **ground for disciplinary action** om A2009-16 s 58
def **ground for occupational discipline** ins A2009-16 s 58

Endnotes

5 Earlier republications

def *licensed insurer* am A2009-16 s 59
def *nominal defendant* am A2009-16 amdt 1.5
def *nominal defendant fund* am A2009-16 amdt 1.6
def *owner* om A2009-16 s 60
def *registered motor vehicle* am A2009-16 amdt 1.7
def *responsible person* ins A2009-16 s 61
def *trader's plate* ins A2009-16 s 61
def *unregistered vehicle permit* ins A2009-16 s 61
def *UVP liability contribution* ins A2009-16 s 61
def *valid trader's plate* ins A2009-16 s 61

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 23 Aug 2008	23 Aug 2008– 30 Sept 2008 (not in force)	A2008-39	amendments by A2008-39
R2 1 Oct 2008	1 Oct 2008– 16 Dec 2008	SL2008-37	new Act and modifications by SL2008-37
R3 17 Dec 2008	17 Dec 2008– 4 July 2009	A2008-54	amendments by A2008-54
R4 5 July 2009	5 July 2009– 1 Oct 2009	A2009-16	amendments by A2009-16
R5 2 Oct 2009	2 Oct 2009– 2 Mar 2010	<u>A2009-22</u>	commenced expiry

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