

2007

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Road Transport (Third-Party Insurance) Bill 2007

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2007

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Road Transport (Third-Party Insurance) Bill 2007

A Bill for

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

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Chapter 1 Preliminary**

2 **Part 1.1 Introduction**

3 **1 Name of Act**

4 This Act is the *Road Transport (Third-Party Insurance) Act 2007*.

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

9 *Note 2* Other road transport legislation includes the following:

- 10 • *Road Transport (Alcohol and Drugs) Act 1977*
- 11 • *Road Transport (Dimensions and Mass) Act 1990*
- 12 • *Road Transport (Driver Licensing) Act 1999*
- 13 • *Road Transport (Public Passenger Services) Act 2001*
- 14 • *Road Transport (Safety and Traffic Management) Act 1999*
- 15 • *Road Transport (Vehicle Registration) Act 1999*.

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

1 **2 Commencement**

2 This Act commences on a day fixed by the Minister by written
3 notice.

4 *Note 1* The naming and commencement provisions automatically commence on
5 the notification day (see Legislation Act, s 75 (1)).

6 *Note 2* A single day or time may be fixed, or different days or times may be
7 fixed, for the commencement of different provisions (see Legislation
8 Act, s 77 (1)).

9 *Note 3* If a provision has not commenced within 6 months beginning on the
10 notification day, it automatically commences on the first day after that
11 period (see Legislation Act, s 79).

12 **3 Dictionary**

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

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

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

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

25 **4 Notes**

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

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

1 **5 Offences against Act—application of Criminal Code etc**

2 Other legislation applies in relation to offences against this Act.

3 *Note 1 Criminal Code*

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

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

10 *Note 2 Penalty units*

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

1 **Part 1.2** **Important concepts**

2 **6** **What is a *personal injury*?**

3 In this Act:

4 *personal injury* means bodily injury and includes—

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

10 **Examples—psychological or psychiatric injury**

11 mental or nervous shock

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

15 **7** **Meaning of *motor accident* and *injured person***

16 In this Act:

17 *motor accident* means an incident that—

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

1 (iii) someone takes action to avoid colliding with the motor
2 vehicle; or

3 (iv) the motor vehicle runs out of control.

4 **8 When does someone *use* a motor vehicle?**

5 (1) For this Act:

6 *use*, a motor vehicle, includes—

7 (a) drive, park or stop the vehicle on a road or road related area;
8 and

9 (b) maintain the vehicle; and

10 (c) if the vehicle is towing a trailer—use the trailer while attached
11 to the vehicle; and

12 (d) if the vehicle is a tow truck towing or carrying an uninsured
13 motor vehicle—use or operate the uninsured vehicle being
14 towed or carried; and

15 (e) anything else prescribed by regulation.

16 (2) Also, if a trailer being towed by a motor vehicle becomes detached
17 from the vehicle and runs out of control, the *use* of the vehicle is
18 taken to include the trailer while it is running out of control.

19 **9 What is the *insurance industry deed*?**

20 In this Act:

21 *insurance industry deed* means a deed that—

22 (a) is between—

23 (i) the Territory; and

24 (ii) the nominal defendant; and

- 1 (iii) licensed insurers; and
2 (b) regulates the conduct of CTP insurance business and matters
3 incidental to—
4 (i) the conduct of CTP insurance business; and
5 (ii) the compulsory third-party insurance scheme under this
6 Act.

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

9 **10 What may be included in the insurance industry deed?**

- 10 (1) The insurance industry deed may include provisions for each of the
11 following:
12 (a) the requirements for licensed insurers to make disclosures and
13 reports to the CTP regulator in accordance with stated
14 standards and requirements;
15 (b) the apportionment of liability, and sharing of costs, between
16 licensed insurers;
17 (c) the appointment of a person to arbitrate disputes between 2 or
18 more licensed insurers about a motor accident claim;
19 (d) the sharing of information between CTP insurers for the
20 mutual benefit of insurers;
21 (e) the management of motor accident claims under CTP policies;
22 (f) direction and guidance for licensed insurers about initiating,
23 managing, monitoring and measuring the effectiveness of the
24 provision of rehabilitation services for injured claimants;

- 1 (g) regulation, in any other way, of the conduct of CTP insurance
2 business under the compulsory third-party insurance scheme
3 under this Act.

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

- 6 (2) A regulation may prescribe—

7 (a) what may or must be included in the insurance industry deed;
8 and

9 (b) anything else about the content of the deed.

10 **11 What is *CTP insurance business*?**

11 In this Act:

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

14 **12 Who is an *owner* of a registered motor vehicle?**

15 In this Act:

16 ***owner***, of a registered motor vehicle, means each of the following
17 people:

18 (a) a person who is a registered operator of the vehicle, unless the
19 person has—

20 (i) sold the vehicle or the person's interest in the vehicle; or

21 (ii) ceased to have possession of the vehicle;

22 *Note* A **registered operator** is a person recorded in the registrable
23 vehicles register as a registered operator of the vehicle (see *Road*
24 *Transport (Vehicle Registration) Act 1999*, dict).

25 (b) a person who is a sole or joint owner of the vehicle, unless the
26 person has—

27 (i) sold the vehicle or the person's interest in the vehicle; or

- 1 (ii) ceased to have possession of the vehicle;
- 2 (c) if a registered operator or sole or joint owner of the vehicle has
- 3 sold the vehicle, or the person's interest in the vehicle, or
- 4 ceased to have possession of the vehicle—anyone who solely
- 5 or jointly, or in common with someone else, is entitled to
- 6 immediate possession of the vehicle.

7 **13 Who is an *owner* of an unregistered motor vehicle?**

8 In this Act:

9 *owner*, of an unregistered motor vehicle, means anyone who solely

10 or jointly, or in common with someone else, is entitled to immediate

11 possession of the vehicle.

12 **14 Possession not affected by certain changes**

13 For this Act, whether a person has possession, is entitled to

14 possession or has ceased to have possession of a motor vehicle is

15 not affected by a change in possession that happens because—

- 16 (a) any hiring (other than a hiring under a hire-purchase
- 17 agreement) or lending of the vehicle for not longer than
- 18 3 months; or
- 19 (b) the passing of possession of the vehicle to a bailee—
- 20 (i) for sale or disposal; or
- 21 (ii) for alteration, repair, renovation, storing, or a similar
- 22 purpose not involving the use of the vehicle for the
- 23 bailee's benefit.

1 **Chapter 2** **Compulsory third-party**
2 **insurance (CTP insurance)**

3 **Part 2.1** **CTP insurance—requirement**

4 **15** **What is an *insured motor vehicle*?**

5 In this Act:

6 *insured motor vehicle* means a motor vehicle insured under a
7 CTP policy.

8 *Note* The motor vehicles insured under a CTP policy are mentioned in s 19.

9 **16** **Who is a *CTP insured person*?**

10 In this Act:

11 *CTP insured person* means a person who is insured under a
12 CTP policy.

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

14 **17** **Offence—using uninsured motor vehicle on road or road**
15 **related area**

16 (1) A person commits an offence if—

17 (a) the person uses a motor vehicle on a road or road related area;
18 and

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

2 Maximum penalty: 50 penalty units.

3 *Note 1* *Use*, a vehicle, is defined in s 8 and includes provisions about trailers.

4 *Road* and *road related area* are defined in the dictionary.

5 *Note 2* Penalties imposed under this Act must be paid into the nominal
6 defendant fund (see s 66).

7 (2) This section does not apply to a person who uses a motor vehicle on
8 a road or road related area if the vehicle—

9 (a) may lawfully be used on the road or road related area although
10 not registered; or

11 (b) is exempted from this section by regulation.

12 (3) It is a defence to a prosecution for an offence against this section if
13 the defendant establishes that, at the time the motor vehicle was
14 used on the road or road related area, the defendant believed on
15 reasonable grounds that the vehicle was an insured motor vehicle.

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

1 **Part 2.2** **CTP policies**

2 **18** **What is a *CTP policy*?**

3 In this Act:

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

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

10 **19** **What is insured under a CTP policy?**

11 A CTP policy has the following subjects:

- 12 (a) the motor vehicle that is being registered, or the registration of
13 which is being renewed, when the CTP insurer for the
14 CTP policy is selected under Part 2.3 (Selecting a
15 CTP insurer);
16 (b) a trailer or anything else that—
17 (i) is attached to the vehicle; or
18 (ii) becomes detached from the vehicle and runs out of
19 control;
20 (c) anything else prescribed by regulation.

21 **20** **Who is insured under a CTP policy?**

22 A CTP policy insures—

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

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

6 **21 What risks are covered by a CTP policy?**

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

9 **22 What risks are not covered by a CTP policy?**

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

Section 22

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

1 **23** **Who is the *CTP insurer*?**

2 In this Act:

3 ***CTP insurer*** means—

- 4 (a) for an insured motor vehicle—the licensed insurer selected
5 under Part 2.3 (Selecting a CTP insurer) as the CTP insurer for
6 the motor vehicle; or
- 7 (b) for a CTP insured person—the CTP insurer for the CTP policy
8 under which the person is insured; or
- 9 (c) for a CTP policy—the CTP insurer that issued the policy.

10 **24** **Licensed insurer not to decline etc to issue CTP policy**

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

13 **25** **CTP insurer to indemnify insured people**

- 14 (1) A CTP policy under this Act is binding on the CTP insurer for the
15 CTP policy.
- 16 (2) The CTP insurer for a CTP policy is, despite any other law, liable to
17 indemnify each CTP insured person for the CTP policy for the
18 liability that the policy purports to cover.
- 19 (3) To remove any doubt, the reference to any other law in
20 subsection (1) does not include a reference to—
- 21 (a) section 22 (What risks are not covered by a CTP policy?); or
- 22 (b) a declaration made under the *Road Transport (General)*
23 *Act 1999*—
- 24 (i) section 12 (Power to include or exclude areas in road
25 transport legislation); or

- 1 (ii) section 13 (Power to exclude vehicles, people or animals
2 from road transport legislation).

3 **26 CTP policy not affected by change of vehicle ownership**

- 4 (1) A CTP policy for a motor vehicle is not affected by—
5 (a) a change in ownership of the vehicle; or
6 (b) the transfer of the registration of the vehicle.
7 (2) If the road transport authority becomes aware of a change in the
8 ownership or registration details of an insured motor vehicle, the
9 road transport authority must tell the CTP insurer for the motor
10 vehicle about the change.

11 **27 CTP policy not affected by errors**

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

1 **Part 2.3** **Selecting a CTP insurer**

2 **28** **Selecting at first registration**

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

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

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

11 **29** **Selecting at renewal of registration**

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

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

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

21 **30** **What is a *registered motor vehicle*?**

22 In this Act:

23 *registered motor vehicle* means a motor vehicle registered under—

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

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

4 *period of registration* means—

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

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

13 **34 Insurer on risk—period of grace**

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

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

- 21 (2) If registration is renewed after the period of grace expires—
- 22 (a) the new insurer comes on risk at the time the renewal of
23 registration is effected; and
- 24 (b) the motor vehicle is not an insured motor vehicle from the
25 expiry of the previous period of registration until the renewal
26 of registration takes effect.
- 27 (3) A CTP insurer ceases to be on risk if the CTP policy is cancelled.

- 1 (4) In this section:
- 2 ***new insurer*** means the CTP insurer whose insurance is later in time.
- 3 *Note* The old insurer and the new insurer may be the same insurer or different
- 4 insurers.
- 5 ***old insurer***, in relation to a motor vehicle the registration of which
- 6 is renewed during the period of grace or later, means the last CTP
- 7 insurer of the vehicle before renewal.
- 8 ***period of grace*** means the 14 days after the registration, or renewal
- 9 of registration, of a motor vehicle expires.
- 10 *Note* There is no period of grace following the cancellation or surrender of
- 11 registration or a renewal of registration of a motor vehicle.
- 12 ***period of registration***—see section 33 (4).
- 13 ***renewal*** of registration of a motor vehicle includes registration of
- 14 the vehicle after the previous registration has expired.

1 **Part 2.5** **Cancellation of CTP policies**

2 **35** **CTP insurer cannot cancel CTP policy**

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

4 **36** **CTP policy cancelled if registration cancelled**

5 A CTP policy is cancelled if the registration of the motor vehicle to
6 which the policy relates is cancelled.

1 **Part 2.6 CTP premiums**

2 **Division 2.6.1 Approval of CTP premiums**

3 **37 What is a *CTP premium*?**

4 In this Act:

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

7 **38 Licensed insurer to charge approved premium**

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

10 *Note* It is a condition of a CTP insurer licence that the licensed insurer must
11 comply with this section (see s 178).

12 **39 CTP regulator may make CTP premium guidelines**

13 (1) The CTP regulator may make guidelines for premiums for
14 CTP policies (the *CTP premium guidelines*).

15 (2) The CTP premium guidelines may—

16 (a) state how CTP premiums are to be worked out and the factors
17 to be taken into account in working out CTP premiums; and

18 (b) require licensed insurers to state how they have worked out
19 CTP premiums; and

20 (c) state the additional information the CTP regulator may require
21 licensed insurers to give to the CTP regulator—

22 (i) with an application for approval of a premium; or

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

3 **Example—additional information**

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

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

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

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

11 *Note 2* It is a condition of a CTP insurer licence that the licensed insurer must
12 comply with CTP premium guidelines (see s 178).

13 **40 Licensed insurer to apply for approval of premiums**

- 14 (1) A licensed insurer must apply to the CTP regulator for approval of
15 premiums the licensed insurer proposes to charge for CTP policies
16 the licensed insurer intends to issue—

17 (a) after the defined period after the licensed insurer's premiums
18 were last approved by the CTP regulator; or

19 (b) if the CTP regulator, by written notice (an *approval notice*),
20 requires the licensed insurer to apply for the approval.

- 21 (2) If a licensed insurer receives an approval notice, the licensed insurer
22 must make the application not later than 4 weeks after the day the
23 licensed insurer receives the approval notice.

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

27 *Note 2* It is a condition of a CTP insurer licence that the licensed insurer must
28 comply with this section (see s 178).

1 *Note 3* If a form is approved under s 266 for this section, the form must be
2 used.

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

5 (3) In this section:

6 *defined period* means—

7 (a) 1 year; or

8 (b) if the CTP regulator allows a longer period of time—the longer
9 period allowed by the CTP regulator.

10 **41 CTP regulator to approve or reject premiums**

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

13 (a) approve the premium; or

14 (b) reject the premium.

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

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

19 (a) decide whether to approve or reject the premium; and

20 (b) tell the licensed insurer—

21 (i) about the decision; and

22 (ii) the reasons for the decision.

1 **42 Criteria to reject premium**

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

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

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

9 (b) having regard to actuarial advice and to other relevant financial
10 information available to the CTP regulator, the premium is
11 excessive; or

12 (c) the premium does not comply with the CTP premium
13 guidelines.

14 *Note* The CTP premium guidelines are made under s 39.

15 **43 Criteria to decide if premium will fund liabilities**

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

19 (a) to pay all acquisition and policy administration expenses of the
20 licensed insurer; and

21 (b) to provide an amount of money that together with anticipated
22 investment income is equal to the best estimate of the cost of
23 motor accident claims plus motor accident claim settlement
24 expenses (in inflated dollars) at the assumed date of settlement;
25 and

26 (c) to provide a profit margin in excess of all motor accident
27 claims, costs and expenses that represents an adequate return
28 on capital invested and compensation for the risk taken; and

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

3 **44 CTP regulator may reconsider rejected premiums**

- 4 (1) If the CTP regulator rejects a premium for a CTP policy (the
5 *original decision*), the licensed insurer may ask the CTP regulator to
6 reconsider the rejected premium.
- 7 (2) Until the rejected premium is reconsidered, the CTP regulator may
8 ask an actuary to decide a provisional premium for the CTP policy.
- 9 (3) A provisional premium has effect, until the CTP regulator makes a
10 decision under subsection (4) in relation to the original decision, as
11 if the provisional premium were a CTP premium.
- 12 (4) The CTP regulator must, not later than 4 weeks after the day the
13 CTP regulator receives the request for reconsideration of the
14 original decision from the licensed insurer—
- 15 (a) reconsider the original decision; and
- 16 (b) decide whether to approve or reject the premium; and
- 17 *Note* Criteria for rejecting the premium are in s 42.
- 18 (c) tell the licensed insurer—
- 19 (i) about the decision; and
- 20 (ii) the reasons for the decision.

21 **45 Arbitration of unresolved premiums**

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

- 1 (3) The arbitrator for the matter is—
2 (a) if the CTP regulator and the licensed insurer agree on an
3 arbitrator—the agreed arbitrator; or
4 (b) if the CTP regulator and the licensed insurer do not agree on an
5 arbitrator—the CTP premium board.
- 6 (4) However, if the matter has been arbitrated by an agreed arbitrator
7 for 7 days and the parties cannot reach agreement, the CTP premium
8 board must arbitrate the matter.
- 9 (5) The arbitrator may approve a premium for a CTP policy only if the
10 premium is, in the arbitrator's opinion, sufficient to fully fund the
11 present and likely future liability of the licensed insurer under this
12 Act.
- 13 *Note 1* Criteria for deciding whether a CTP premium will fully fund the present
14 and likely future liability under this Act of a licensed insurer are in s 43.
- 15 *Note 2* A decision under this section by an arbitrator is a reviewable decision
16 (see the *Road Transport (General) Act 1999*, pt 7 and the *Road*
17 *Transport (General) Regulation 2000*).
- 18 (6) The regulations may make provision for the arbitration of matters.

19 **46 CTP regulator to report on licensed insurer's profit**
20 **margins**

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

1 **Division 2.6.2 CTP premium board**

2 **47 CTP premium board**

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

4 **48 Functions of board**

5 The CTP premium board has the following functions:

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

8 **49 Board members**

9 (1) The CTP premium board has the following members:

- 10 (a) a chair;
- 11 (b) a government representative;
- 12 (c) 3 motorist representatives;
- 13 (d) 2 CTP insurer representatives.

14 (2) A person must not hold 2 or more positions mentioned in

15 subsection (1).

16 **50 Appointment of board members**

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

18 *Note 1* For the making of appointments (including acting appointments), see

19 the Legislation Act, pt 19.3.

20 *Note 2* In particular, a person may be appointed for a particular provision of a

21 law (see Legislation Act, s 7 (3)) and an appointment may be made by

22 naming a person or nominating the occupant of a position (see

23 Legislation Act, s 207).

24 *Note 3* Certain Ministerial appointments require consultation with an Assembly

25 committee and are disallowable (see Legislation Act, div 19.3.3).

-
- 1 (2) The only criteria for deciding whether to appoint a person as a
2 member are—
- 3 (a) that the person has the experience or expertise necessary to
4 exercise the functions of a member; and
- 5 (b) for the chair—that the person is also a senior lawyer; and
- 6 (c) for the government representative, that the person also—
- 7 (i) is a public servant; and
- 8 (ii) represents the interests of the Territory; and
- 9 (d) for a motorist representative—that the person also represents
10 the interests of motorists; and
- 11 (e) for a CTP insurer representative—that the person also
12 represents the interests of CTP insurers.
- 13 (3) The appointment of a member must be for a term of not longer than
14 3 years.
- 15 (4) The conditions of appointment of a member are the conditions
16 stated in the appointment.
- 17 (5) In this section:
- 18 ***Australian legal practitioner***—see the *Legal Profession Act 2006*,
19 section 8.
- 20 ***senior lawyer*** means a lawyer who—
- 21 (a) is an Australian legal practitioner; and
- 22 (b) has been an Australian legal practitioner for at least 10 years;
23 and
- 24 (c) has practised law in the area of personal injury matters for at
25 least 5 years.

1 **51 Appointment of deputy chair**

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

4 **52 Ending board member appointments**

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

- 7 (a) if the member contravenes a territory law; or
8 (b) for misbehaviour; or
9 (c) if the member becomes bankrupt or executes a personal
10 insolvency agreement; or
11 (d) if the member is convicted, or found guilty, in Australia of an
12 offence punishable by imprisonment for at least 1 year; or
13 (e) if the member is convicted, or found guilty, outside Australia
14 of an offence that, if it had been committed in the ACT, would
15 be punishable by imprisonment for at least 1 year; or
16 (f) if the member exercises the member's functions other than in
17 accordance with section 53; or
18 (g) if the member fails to take all reasonable steps to avoid being
19 placed in a position where a conflict of interest arises during
20 the exercise of the member's functions; or
21 (h) if the member contravenes section 56 (Disclosure of interests
22 by board members); or
23 (i) if the member is absent from 3 consecutive meetings of the
24 board, otherwise than on approved leave; or

1 (j) for physical or mental incapacity, if the incapacity substantially
2 affects the exercise of the member's functions.

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

5 **53 Honesty, care and diligence of board members**

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

10 **54 Conflicts of interest by board members**

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

14 **55 Board agenda to require disclosure of interest item**

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

18 **56 Disclosure of interests by board members**

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

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

1 (2) The disclosure must be recorded in the CTP premium board's
2 minutes and, unless the board otherwise decides, the member must
3 not—

4 (a) be present when the board considers the issue; or

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

6 **Example**

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

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

13 • Albert may be present when the board considers the issue but not take part in
14 the decision

15 • Boris may be present for the consideration and take part in the decision.

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

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

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

25 (4) In this section:

26 *associate*, of a person, means—

27 (a) the person's business partner; or

28 (b) a close friend of the person; or

29 (c) a family member of the person.

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

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

- 8 (a) an associate of the person;
- 9 (b) a corporation if the corporation has not more than
10 100 members and the person, or an associate of the person, is a
11 member of the corporation;
- 12 (c) a subsidiary of a corporation mentioned in paragraph (b);
- 13 (d) a corporation if the person, or an associate of the person, is an
14 executive officer of the corporation;
- 15 (e) the trustee of a trust if the person, or an associate of the person,
16 is a beneficiary of the trust;
- 17 (f) a member of a firm or partnership if the person, or an associate
18 of the person, is a member of the firm or partnership;
- 19 (g) someone else carrying on a business if the person, or an
20 associate of the person, has a direct or indirect right to
21 participate in the profits of the business.

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

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

- 1 **57 Reporting of disclosed CTP premium board interests to**
2 **Minister**
- 3 (1) Within 3 months after the day a material interest is disclosed under
4 section 56 (1), the chair of the CTP premium board must report to
5 the Minister in writing about—
- 6 (a) the disclosure; and
7 (b) the nature of the interest disclosed; and
8 (c) any decision by the board under section 56 (2).
- 9 (2) The chair must also give the Minister, not later than 31 days after
10 the end of each financial year, a statement that sets out the
11 information given to the Minister in reports under subsection (1)
12 that relate to disclosures made during the previous financial year.
- 13 (3) The Minister must give a copy of the statement to the relevant
14 committee of the Legislative Assembly within 31 days after the day
15 the Minister receives the statement.
- 16 (4) In this section:
- 17 *relevant committee* means—
- 18 (a) a standing committee of the Legislative Assembly nominated
19 by the Speaker for subsection (3); or
- 20 (b) if no nomination under paragraph (a) is in effect—the standing
21 committee of the Legislative Assembly responsible for public
22 accounts.
- 23 **58 Protection of CTP premium board members from liability**
- 24 (1) A CTP premium board member is not civilly liable for anything
25 done or omitted to be done honestly and without recklessness—
- 26 (a) in the exercise of a function under a territory law; or

- 1 (b) in the reasonable belief that the act or omission was in the
2 exercise of a function under a territory law.
- 3 (2) Any liability that would, apart from this section, attach to a
4 CTP premium board member attaches instead to the Territory.

1 **Part 2.7** **Nominal defendant liable for**
2 **uninsured or unidentified motor**
3 **vehicles**

4 **59** **Nominal defendant**

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

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

11 **60** **What is an *uninsured motor vehicle*?**

- 12 (1) For this Act:
- 13 *uninsured motor vehicle*—
- 14 (a) means a motor vehicle for which there is no CTP policy in
15 force; and
- 16 (b) includes a trailer that—
- 17 (i) is attached to an uninsured motor vehicle; or
- 18 (ii) runs out of control after becoming accidentally detached
19 from an uninsured motor vehicle; and
- 20 (c) includes anything else prescribed by regulation.
- 21 (2) To avoid any doubt, it does not matter whether a trailer mentioned
22 in subsection (1) (b) is registered.

- 1 **61 Nominal defendant liable—uninsured motor vehicle**
- 2 (1) This section applies if—
- 3 (a) a personal injury is caused by a motor accident; and
- 4 (b) at the time of the motor accident, the motor vehicle involved in
- 5 the motor accident—
- 6 (i) had a sufficient connection with the ACT; and
- 7 (ii) was an uninsured motor vehicle; and
- 8 (c) the motor accident happened anywhere in Australia.
- 9 *Note 1* **Motor accident** is defined in s 7.
- 10 **Personal injury** is defined in s 6.
- 11 *Note 2* The circumstances in which a motor vehicle has a sufficient connection
- 12 with the ACT may be prescribed by regulation (see s (5)).
- 13 (2) The nominal defendant is liable in relation to the personal injury as
- 14 if—
- 15 (a) a CTP policy were in force for the motor vehicle; and
- 16 (b) the nominal defendant were the CTP insurer for the
- 17 CTP policy.
- 18 *Note* **CTP policy** is defined in s 18.
- 19 (3) However, the nominal defendant is not liable in relation to the
- 20 personal injury—
- 21 (a) if—
- 22 (i) the motor accident happened on an area that is not a road
- 23 and is open to or used by the public for driving, riding or
- 24 parking vehicles; and

- 1 (ii) at the time the motor accident happened, the person
2 injured was a trespasser on the land; or
- 3 *Note* The area described in subpar (i) is a road related area (see dict,
4 def **road related area** par (a) (iv)).
- 5 (b) the uninsured motor vehicle is owned by—
- 6 (i) the Commonwealth, or an entity representing the
7 Commonwealth; or
- 8 (ii) the Territory, or an entity representing the Territory; or
- 9 (c) at the time the motor accident happened—
- 10 (i) the uninsured motor vehicle was registered under either
11 the law of a place other than the ACT or under a law of
12 the Commonwealth; and
- 13 (ii) the uninsured motor vehicle was—
- 14 (A) covered under a policy of compulsory third-party
15 insurance; or
- 16 (B) subject to coverage under a compulsory motor
17 vehicle or trailer accident compensation scheme of
18 that place or of the Commonwealth; or
- 19 (d) a regulation prescribes that, in the circumstances, the nominal
20 defendant is not liable in relation to the personal injury.
- 21 *Note* The nominal defendant is also not liable for the risks mentioned in s 22.
- 22 (4) In this section:
- 23 **motor vehicle** means a motor vehicle that—
- 24 (a) is exempt from registration; or

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

12 **62 What is an *unidentified motor vehicle*?**

- 13 (1) In this Act:
14 *unidentified motor vehicle*—
- 15 (a) means a motor vehicle that cannot be identified after
16 reasonable inquiry and search; and
17 (b) includes a trailer that—
18 (i) is attached to an unidentified motor vehicle; or
19 (ii) runs out of control after becoming accidentally detached
20 from an unidentified motor vehicle; and
21 (c) includes anything else prescribed by regulation.
- 22 (2) To avoid any doubt, it does not matter whether a trailer mentioned
23 in subsection (1) (b) is registered.

Section 63

1 (3) The inquiry or search may be proved orally or by affidavit of the
2 person who made the inquiry or search.

3 *Note 1* The claimant must prove that reasonable inquiry or search has been
4 carried out before the nominal defendant may be added as a later
5 respondent (see s 83).

6 *Note 2* The respondent must prove that reasonable inquiry or search has been
7 carried out before the nominal defendant may be added as a contributor
8 (see s 85).

9 **63 Nominal defendant liable—unidentified motor vehicle**

10 (1) This section applies if—

11 (a) a personal injury is caused by a motor accident; and

12 (b) the motor vehicle involved in the motor accident is an
13 unidentified motor vehicle; and

14 (c) the motor accident happened in the ACT.

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

17 (2) The nominal defendant is liable in relation to the personal injury as
18 if—

19 (a) a CTP policy were in force for the motor vehicle; and

20 (b) the nominal defendant were the CTP insurer for the
21 CTP policy.

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

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

25 (a) the motor accident happened on an area that is not a road and is
26 open to or used by the public for driving, riding or parking
27 vehicles; and

1 (b) at the time the motor accident happened, the person injured
2 was a trespasser on the land.

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

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

6 **64 Nominal defendant may deal with motor accident claim**

7 (1) If a motor accident claim is made against the nominal defendant, the
8 nominal defendant may deal with the motor accident claim, and any
9 proceeding relating to the motor accident claim, in the way the
10 nominal defendant considers appropriate including—

11 (a) settling or compromising the motor accident claim; and

12 (b) bringing and prosecuting a proceeding under this Act for the
13 motor accident claim and settling or compromising the
14 proceeding.

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

- 17 • s 166 (Insurer may recover costs if motor vehicle defective)
18 • s 167 (Insurer may recover costs if fraud)
19 • s 168 (Nominal defendant may recover costs from owner or
20 driver)
21 • s 233 (Nominal defendant may recover from insolvent
22 insurer).

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

- 1 **65** **Nominal defendant to pay motor accident claims from**
2 **nominal defendant fund**
- 3 (1) The nominal defendant is not personally liable to pay—
- 4 (a) an amount payable in satisfaction of a motor accident claim
5 made, or judgment obtained, under—
- 6 (i) section 61 (Nominal defendant liable—uninsured motor
7 vehicle); or
- 8 (ii) section 63 (Nominal defendant liable—unidentified motor
9 vehicle); or
- 10 (b) the amount of any costs or expenses incurred by the nominal
11 defendant for the motor accident claim or judgment.
- 12 (2) The nominal defendant must pay the amounts out of the nominal
13 defendant fund.
- 14 *Note* The nominal defendant fund is established under s 66.
- 15 **66** **Nominal defendant fund**
- 16 (1) The CTP regulator must establish a fund (the *nominal defendant*
17 *fund*).
- 18 (2) The following must be paid into the nominal defendant fund:
- 19 (a) any penalties or penalty interest imposed under this Act;
- 20 (b) amounts collected under section 67;
- 21 (c) the interest from time to time accruing from the investment of
22 the nominal defendant fund;

- 1 (d) amounts recovered by the nominal defendant under this Act;
- 2 *Note* The nominal defendant may recover amounts under:
- 3 • s 166 (Insurer may recover costs if motor vehicle defective)
- 4 • s 167 (Insurer may recover costs if fraud)
- 5 • s 168 (Nominal defendant may recover costs from owner or
- 6 driver)
- 7 • s 233 (Nominal defendant may recover from insolvent
- 8 insurer).
- 9 (e) amounts required to be paid into the nominal defendant fund
- 10 under this or another Act.
- 11 (3) The following must be paid from the nominal defendant fund:
- 12 (a) amounts required to be paid from the fund under section 65
- 13 (Nominal defendant to pay motor accident claims from
- 14 nominal defendant fund);
- 15 (b) all other amounts required to be paid from the fund under this
- 16 or another Act.
- 17 (4) The CTP regulator may invest money in the nominal defendant fund
- 18 which is not immediately required for the fund—
- 19 (a) in any way that the Treasurer is authorised to invest money
- 20 under the *Financial Management Act 1996*; or
- 21 (b) in any other way approved by the Minister and the Treasurer.

22 **67 Collections for nominal defendant fund**

- 23 (1) The CTP regulator must, each financial year, collect an amount for
- 24 the nominal defendant fund—
- 25 (a) from the people and funds prescribed by regulation; and
- 26 (b) in accordance with the arrangements prescribed by regulation.
- 27 (2) The CTP regulator may decide the amount to be collected for a
- 28 financial year.

Chapter 2
Part 2.7

Compulsory third-party insurance (CTP insurance)
Nominal defendant liable for uninsured or unidentified motor vehicles

Section 67

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

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

1 **Chapter 3 Motor accident claims**

2 **Part 3.1 Preliminary—ch 3**

3 **68 Definitions—ch 3**

4 In this chapter:

5 *complying notice of claim* means a notice of claim, under section 76
6 (Notice of claim) or section 83 (Claimant may add later
7 respondents), that is given as required under this part.

8 *Note* In some circumstances a claimant is taken to have given a respondent a
9 complying notice of claim (see s 87).

10 *compulsory conference*—see section 130.

11 *contribution notice*—see section 85.

12 *contributor*, for a motor accident claim—see section 85.

13 *court*, for a motor accident claim, means—

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

19 *insurer*, for a motor accident claim—see section 73.

20 *mandatory final offer*—see section 135.

21 *medical treatment* means—

- 22 (a) an examination, test or analysis, conducted by or under the
23 direction, or at the request, of a doctor to diagnose an injury; or

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

19 ***notice of claim***, for a motor accident claim—see section 76.

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

22 ***response***, for a motor accident claim—see section 82.

23 ***respondents' claim manager***, for a motor accident claim—see
24 section 84.

25 *Note* ***Claimant***, for a motor accident claim, is defined in s 70.

26 ***Motor accident*** is defined in s 7.

27 ***Motor accident claim*** is defined in s 69.

28 ***Respondent***, for a motor accident claim, is defined in s 71.

1 **69** **What is a *motor accident claim*?**

2 In this Act:

3 ***motor accident claim***, for a motor accident—

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

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

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

10 **70** **Who is the *claimant* for a motor accident claim?**

11 In this Act:

12 ***claimant***, for a motor accident claim, means—

13 (a) a person who makes, or is entitled to make, the motor accident
14 claim; or

15 (b) in relation to rehabilitation, medical treatment or loss
16 suffered—the injured person to whom the claim relates.

17 **71** **Who is the *respondent* for a motor accident claim?**

18 In this chapter:

19 ***respondent***, for a motor accident claim—

20 (a) means a person against whom a claimant makes a motor
21 accident claim; and

22 (b) includes—

23 (i) if the person mentioned in paragraph (a) is not the insurer
24 for the motor accident claim—the insurer for the motor
25 accident claim; and

1 (ii) a later respondent.

2 *Note 1* **Insurer**, for a motor accident claim, is defined in s 73.

3 **Later respondent**, for a motor accident claim, is defined in s 83.

4 *Note 2* If a claimant brings a court proceeding based on a motor accident claim
5 and the respondent is an insured person or an insurer, the claimant may
6 need to bring the proceeding against the insured person and the insurer
7 as joint defendants (see s 145).

8 **72 Who is an *insured person*?**

9 In this Act:

10 ***insured person***, for a motor accident claim, means—

11 (a) a CTP insured person; or

12 (b) a person for whose acts and omissions the nominal defendant is
13 liable under section 61 (Nominal defendant liable—uninsured
14 motor vehicle).

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

16 **73 Who is the *insurer* for a motor accident claim?**

17 In this Act:

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

19 (a) if the person is a CTP insured person—the CTP insurer for the
20 person; or

21 (b) if the person is not a CTP insured person—the nominal
22 defendant.

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

25 (a) an insured motor vehicle—the CTP insurer for the motor
26 vehicle; or

27 (b) an uninsured motor vehicle—the nominal defendant; or

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

2 **74 Insured person not to admit liability, settle or make**
3 **payments**

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

6 (a) admit liability in relation to a motor accident claim; or

7 (b) settle, or offer to settle, a motor accident claim; or

8 (c) make a payment, or offer or promise to make a payment, in
9 relation to a motor accident claim.

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

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

15 (4) An insured person who contravenes this section does not incur civil
16 liability to an insurer.

17 **75 Power of insurer to act for insured**

18 (1) If a motor accident claim is made against an insured person, the
19 person's insurer—

20 (a) must carry out the negotiations and legal proceedings related to
21 the motor accident claim; and

22 (b) may compromise or settle the motor accident claim and legal
23 proceedings related to the motor accident claim; and

24 (c) may act for the insured person in any other way for the motor
25 accident claim.

Section 75

- 1 (2) The insured person must sign any documents necessary to give
2 effect to this section and, if the insured person does not sign or is
3 dead, absent or cannot be found, the insurer may sign for the insured
4 person.
- 5 (3) Nothing said or done by an insurer in relation to a motor accident
6 claim, or legal proceedings related to a motor accident claim, is an
7 admission of liability in, or otherwise prejudices or affects, another
8 claim or proceedings arising out of the same circumstances.

1 **Part 3.2** **Motor accident claims**
2 **procedures**

3 *Notes to pt 3.2*

4 Costs may be awarded against a party who does not comply with this part
5 (see s 91 and s 92).

6 The court may order a party to comply with a duty imposed under this part
7 (see s 107).

8 **76 Notice of claim**

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

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

15 *Note 2* If a form is approved under s 266 for a notice of claim, the form must be
16 used.

- 17 (2) The notice of claim must—
18 (a) contain a statement of the information prescribed by
19 regulation; and
20 (b) authorise each respondent for the motor accident claim to have
21 access to the records and sources of information relevant to the
22 claim that are prescribed by regulation; and
23 (c) be accompanied by any documents prescribed by regulation.
24 (3) If the claimant is a child, the claimant's parent or legal guardian
25 may give the notice of claim for the claimant.

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

- 1 **77 Time for giving notice of claim—CTP insurer**
- 2 (1) This section applies if the insurer for a motor accident claim is the
- 3 CTP insurer for the motor vehicle for the claim.
- 4 (2) The notice of claim must be given under section 76 not later than the
- 5 earlier of the following days:
- 6 (a) the day that is 9 months after—
- 7 (i) the day the motor accident for the motor accident claim
- 8 happened; or
- 9 (ii) if symptoms of the personal injury caused by the motor
- 10 accident are not immediately apparent—the day
- 11 symptoms of the personal injury first appear;
- 12 (b) the day that is 1 month after the later of the following days:
- 13 (i) the day the claimant first instructs a lawyer to provide
- 14 advice about seeking damages for the personal injury;
- 15 (ii) the day the respondent is identified.
- 16 *Note* However, the time for giving a notice of claim for a claimant with a
- 17 legal disability begins on the day after the day the claimant's legal
- 18 disability ends (see s 90).
- 19 (3) If the claimant does not give the notice of claim as required in
- 20 subsection (2), a reasonable excuse for the delay must be given in
- 21 the notice or by separate written notice to the respondent.
- 22 (4) Without limiting subsection (3), an excuse is reasonable if the
- 23 excuse is prescribed by regulation.
- 24 **78 Time for giving notice of claim—nominal defendant**
- 25 (1) This section applies if the insurer for the motor accident claim is the
- 26 nominal defendant.

- 1 (2) The notice of claim must be given under section 76 not later than
2 3 months after the day the motor accident for the motor accident
3 claim happened.

4 *Note* However, the time for giving a notice of claim for a claimant with a
5 legal disability begins on the day after the day the claimant's legal
6 disability ends (see s 90).

- 7 (3) If the claimant does not give the notice of claim as required in
8 subsection (2), the motor accident claim is barred.

9 *Note* In addition, the nominal defendant cannot waive compliance with the
10 time limit and the court cannot give leave to bring a proceeding despite
11 noncompliance with the time limit (see s 88).

12 **79 Respondent to identify and notify others**

- 13 (1) If a respondent knows of anyone else (a *relevant person*) against
14 whom the claimant may be able to begin a proceeding based on the
15 motor accident claim, the respondent must, not later than 7 days
16 after the day the respondent receives the notice of claim—

- 17 (a) give a copy of the notice of claim to the relevant person; and
18 (b) tell the claimant in writing about the relevant person, including
19 a short written explanation of why the respondent believes that
20 the person may be a relevant person.

- 21 (2) If the respondent is a child, the respondent's parent or legal guardian
22 may comply with subsection (1) for the respondent.

23 **80 Preliminary response to claimant**

- 24 (1) A respondent must, in writing not later than 1 month after the day
25 the respondent receives a notice of claim under section 76—

- 26 (a) respond to the claimant under section 82; or

- 1 (b) if the respondent cannot decide, on the information in the
2 notice, whether the respondent is properly a respondent for the
3 claim—give the claimant a written notice about the further
4 information the respondent reasonably needs to make that
5 decision; or
- 6 (c) if the respondent believes that he or she is not properly a
7 respondent for the claim—give the claimant a written notice to
8 that effect, indicating—
- 9 (i) the reasons for the belief; and
- 10 (ii) any information the respondent has that may help the
11 claimant identify someone who may be a respondent for
12 the claim.
- 13 (2) A claimant given a written notice under subsection (1) (b) must, not
14 later than 1 month after the day the claimant is given the notice—
- 15 (a) give the respondent the further information indicated in the
16 notice; or
- 17 (b) tell the respondent, in writing, that the claimant—
- 18 (i) considers the respondent to be properly a respondent for
19 the claim; and
- 20 (ii) requires the respondent to respond to the claimant under
21 section 82.
- 22 (3) Not later than 1 month after the day the respondent is given the
23 information under subsection (2) (a), the respondent must, having
24 regard to the information—
- 25 (a) respond to the claimant under section 82; or

- 1 (b) if the respondent believes that he or she is not properly a
2 respondent for the claim, give the claimant a written notice to
3 that effect, indicating—
- 4 (i) the reasons for the belief; and
- 5 (ii) any information the respondent has that may help the
6 claimant identify someone who may be a respondent for
7 the claim.
- 8 (4) If the claimant is given notice under subsection (1) (c) or
9 subsection (3) (b) that the respondent is not properly a respondent
10 for the motor accident claim, the claimant must, not later than 1
11 month after the day the claimant is given the notice, tell the
12 respondent, in writing, that the claimant—
- 13 (a) accepts that the respondent is not properly a respondent for the
14 claim; or
- 15 (b) considers the respondent to be properly a respondent for the
16 claim and requires the respondent to respond to the claimant
17 under section 82.
- 18 (5) Acknowledgement given to the respondent under subsection (4) (a)
19 does not prevent the claimant from later giving the respondent
20 another notice of claim under section 76.

21 **81 Acknowledgment that proper respondent not admission**
22 **of liability**

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

1 **82 Response to notice of claim**

2 (1) This section applies if a respondent—

3 (a) considers the respondent to be properly a respondent for a
4 motor accident claim; or

5 (b) is told under section 80 (2) (b) or section 80 (4) (b)
6 (Preliminary response to claimant) that the claimant considers
7 the respondent is properly a respondent for a motor accident
8 claim.

9 (2) The respondent must, not later than the required day, give the
10 claimant a written notice (a *response*)—

11 *Note* **Required day**—see s (5).

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

14 *Note* **Complying notice of claim** is defined in s 68.

15 (b) if the respondent is not satisfied that the notice of claim is a
16 complying notice of claim—identifying the noncompliance and
17 stating whether the respondent waives compliance; and

18 (c) if the respondent does not waive compliance—allowing the
19 claimant a reasonable period, of at least 1 month, stated in the
20 response to—

21 (i) satisfy the respondent that the notice of claim is a
22 complying notice of claim; or

23 (ii) take reasonable action stated in the response to remedy
24 the noncompliance; and

25 (d) stating whether the insurer for the motor accident claim is
26 prepared (without admitting liability) to meet the reasonable
27 and appropriate costs of the claimant's rehabilitation.

28 *Note* Further provisions about rehabilitation are in pt 3.6.

- 1 (3) If the respondent does not give a response by the required day, the
2 respondent is conclusively presumed to be satisfied that the notice
3 of claim is a complying notice of claim.
- 4 (4) If subsection (2) (c) applies, the respondent must, not later than
5 1 month after the day the period stated in the response ends, give the
6 claimant a written notice stating that the respondent—
- 7 (a) is satisfied the notice of claim is a complying notice of claim
8 requirements, is satisfied with the action taken by the claimant
9 to remedy the noncompliance, or waives the noncompliance; or
- 10 (b) is not satisfied that the claimant has taken reasonable action to
11 remedy the noncompliance, and giving full particulars of the
12 noncompliance and the claimant's failure to remedy it.
- 13 (5) In this section:
- 14 *required day* means—
- 15 (a) if the respondent responds directly to the claimant under this
16 section as mentioned in section 80 (1) (a)—the day applying
17 under section 80 (1); and
- 18 (b) in any other case—the later of the following:
- 19 (i) if the respondent gives notice to the claimant under
20 section 80 (3) (a)—1 month after the day the respondent
21 is given the further information under section 80 (2) (a);
- 22 (ii) if the claimant tells the respondent under
23 section 80 (2) (b) or section 80 (4) (b) that the claimant
24 considers the respondent is properly a respondent for the
25 motor accident claim—1 month after the day the claimant
26 tells the respondent under that paragraph.

- 1 **83 Claimant may add later respondents**
- 2 (1) After a claimant has given a notice of claim to a respondent, the
- 3 claimant may add someone else as a respondent for the motor
- 4 accident claim (a *later respondent*) by giving the later respondent—
- 5 (a) the notice of claim; and
- 6 (b) copies of other documents given to, or received from, other
- 7 respondents under this part.
- 8 (2) However, the claimant may only add a later respondent—
- 9 (a) not later than the day prescribed by regulation; or
- 10 (b) later than the day prescribed for paragraph (a) if—
- 11 (i) the later respondent and all parties for the motor accident
- 12 claim agree; or
- 13 (ii) the court gives leave.
- 14 (3) Also, the claimant may add the nominal defendant as a later
- 15 respondent in relation to a motor accident claim for a motor accident
- 16 involving an unidentified motor vehicle only if the claimant has
- 17 made reasonable inquiry and search for the identity of the motor
- 18 vehicle.
- 19 (4) The inquiry or search may be proved orally or by affidavit by the
- 20 person who made the inquiry or search.
- 21 (5) If the claimant adds a later respondent under this section—
- 22 (a) the later respondent must respond to the notice of claim as if
- 23 the notice were given under section 76; and
- 24 (b) the claimant must, in writing, tell each other respondent of the
- 25 addition not later than the day prescribed by regulation.

-
- 1 **84 Multiple respondents**
- 2 (1) If there are 2 or more respondents for a motor accident claim, 1 of
- 3 the respondents (the *respondents' claim manager*) must act for all
- 4 of the respondents under this chapter.
- 5 (2) The respondents' claim manager must be decided—
- 6 (a) by agreement between the respondents; or
- 7 (b) if the respondents cannot agree within 2 months after the day
- 8 the claimant first gave, or is taken to have given, a respondent
- 9 for the motor accident claim a complying notice of claim—
- 10 under the industry deed.
- 11 *Note* The circumstances in which a claimant is taken to have given a
- 12 respondent a complying notice of claim are in s 87.
- 13 (3) Until the respondents' claim manager is decided under
- 14 subsection (2), the respondent to which the notice of claim is first
- 15 given under section 76 is the respondents' claim manager.
- 16 (4) The respondents' claim manager—
- 17 (a) may exercise the functions given under this part in relation to
- 18 the motor accident claim and the claimant for all the
- 19 respondents; and
- 20 (b) must act, as far as practicable, with the agreement of all the
- 21 respondents.
- 22 (5) Action taken, or an agreement made, by the respondents' claim
- 23 manager in relation to the motor accident claim is binding on each
- 24 respondent as far as it affects the claimant.
- 25 (6) However, if the respondents' claim manager acts beyond the scope
- 26 of the manager's authority, the manager is liable to each other
- 27 respondent for any loss suffered by the other respondent.

- 1 **85 Respondent may add contributor**
- 2 (1) A respondent who receives a complying notice of claim may, not
- 3 later than the day prescribed by regulation, add someone else as a
- 4 contributor (the *contributor*) for the motor accident claim by giving
- 5 the person a written notice (a *contribution notice*)—
- 6 (a) claiming an indemnity from, or contribution towards, the
- 7 respondent’s liability; and
- 8 (b) stating the grounds on which the respondent holds the person
- 9 liable; and
- 10 (c) stating any other information prescribed by regulation; and
- 11 (d) accompanied by copies of documents about the motor accident
- 12 claim given to, or received from, other parties under this
- 13 chapter.
- 14 (2) However, the respondent may add a contributor after the day
- 15 prescribed under subsection (1) only if—
- 16 (a) the contributor and all parties for the motor accident claim
- 17 agree; or
- 18 (b) the court gives leave.
- 19 (3) Also, if the respondent proposes to add the nominal defendant as a
- 20 contributor because the motor accident for the motor accident claim
- 21 involved an unidentified motor vehicle, the respondent may add the
- 22 nominal defendant only if the respondent has made reasonable
- 23 inquiry and search for the identity of the motor vehicle.
- 24 (4) The inquiry or search may be proved orally or by affidavit of the
- 25 person who made the inquiry or search.
- 26 (5) If the respondent adds a contributor under this section, the
- 27 respondent must give a copy of the contribution notice to each other
- 28 party not later than the day prescribed by regulation.

1 **86 Contributor's response**

2 (1) A contributor must, not later than 1 month after the day the
3 contributor receives a contribution notice, give the respondent who
4 gave the contribution notice a written response (the *contributor's*
5 *response*)—

6 (a) containing a statement of the information prescribed by
7 regulation; and

8 (b) accompanied by the documents (if any) prescribed by
9 regulation.

10 (2) The contributor's response must also state—

11 (a) whether the claim for the contribution or indemnity claimed in
12 the contribution notice is admitted, denied or admitted in part;
13 and

14 (b) if the claim for the contribution or indemnity is admitted in
15 part—the extent to which the claim is admitted.

16 (3) An admission of liability in the contributor's response is not binding
17 on the contributor—

18 (a) for another claim; or

19 (b) at all if it later appears the admission was induced by fraud.

20 (4) If the respondent requires information provided by a contributor
21 under this section to be verified by statutory declaration, the
22 contributor must verify the information by statutory declaration.

23 **87 Noncomplying notice of claim may be complying notice**
24 **of claim**

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

28 *Note* *Complying notice of claim* is defined in s 68.

Section 87

- 1 (2) The claimant is taken to have given the respondent a complying
2 notice of claim if—
- 3 (a) the respondent has told the claimant, in writing—
- 4 (i) under section 82 (2) (a) or section 82 (4) (a) (Response to
5 notice of claim), that the respondent is satisfied that the
6 notice of claim is a complying notice of claim; or
- 7 (ii) under section 82 (2) (b) or section 82 (4) (a) that the
8 respondent waives any noncompliance; or
- 9 (iii) under section 82 (4) (a), that the respondent is satisfied
10 with the action the claimant has taken to remedy the
11 noncompliance; or
- 12 (b) the respondent has not responded to the claimant as required
13 and is conclusively presumed, under section 82 (3), to be
14 satisfied the notice is a complying notice of claim; or
- 15 *Note* The nominal defendant cannot waive compliance with the time
16 limit (see s (3) (a)).
- 17 (c) the court, by order, on application by the claimant—
- 18 (i) declares that the claimant has remedied the
19 noncompliance; or
- 20 (ii) authorises the claimant to proceed further with the motor
21 accident claim despite the noncompliance.
- 22 *Note* The court cannot authorise the claimant to proceed further with a
23 motor accident claim against the nominal defendant if the
24 claimant has not complied with the time limit (see s (3) (b)).
- 25 (3) However, if a motor accident claim against the nominal defendant is
26 barred under section 78 (Time for giving notice of claim—nominal
27 defendant)—
- 28 (a) the nominal defendant must not waive compliance with the
29 3-month time limit for giving the notice of claim; and

- 1 (b) the court cannot authorise the claimant to proceed further with
2 the motor accident claim despite the noncompliance with the
3 3-month time limit for giving the notice of claim.
- 4 (4) An order of the court under subsection (2) (c) may be made on the
5 conditions that the court considers necessary or appropriate to
6 minimise prejudice to a respondent because of the claimant's
7 noncompliance.
- 8 (5) The claimant is taken to have given, and the respondent is taken to
9 have received, the complying notice of claim, on the day—
- 10 (a) for subsection (2) (a)—the respondent tells the claimant, in
11 writing; or
- 12 (b) for subsection (2) (b)—that is the required day under
13 section 82 for the presumption; or
- 14 (c) for subsection (2) (c)—the court makes the declaration or gives
15 the authorisation.

16 **88 Claimant not to proceed without complying notice of**
17 **claim**

- 18 (1) This section applies if the claimant for a motor accident claim—
- 19 (a) does not give the respondent for the motor accident claim a
20 complying notice of claim; or
- 21 (b) is not taken to have given the respondent for the motor
22 accident claim a complying notice of claim.
- 23 *Note* The circumstances in which a claimant is taken to have given a
24 respondent a complying notice of claim are in s 87.
- 25 (2) The claimant cannot proceed with the motor accident claim.

- 1 **89 Respondent to try to resolve motor accident claim**
- 2 (1) A respondent must, not later than 6 months after the day the
- 3 respondent receives, or is taken to have received, a complying
- 4 notice of claim for a motor accident claim—
- 5 (a) take any reasonable steps necessary to find out about the motor
- 6 accident for the motor accident claim; and
- 7 (b) tell the claimant, in writing—
- 8 (i) whether liability is admitted or denied; and
- 9 (ii) if contributory negligence is claimed—the degree of the
- 10 contributory negligence expressed as a percentage; and
- 11 (c) if the claimant—
- 12 (i) made an offer of settlement in the notice of claim—tell
- 13 the claimant whether the respondent accepts or rejects the
- 14 offer; or
- 15 (ii) did not make an offer of settlement in the notice of
- 16 claim—invite the claimant to make a written offer of
- 17 settlement; and
- 18 (d) make a fair and reasonable estimate of the damages to which
- 19 the claimant would be entitled in a proceeding for the motor
- 20 accident claim against the respondent; and
- 21 (e) either—
- 22 (i) make a written offer, or counteroffer, of settlement to the
- 23 claimant setting out in detail the basis on which the offer,
- 24 or counteroffer, is made; or
- 25 (ii) settle the motor accident claim by accepting an offer
- 26 made by the claimant.

- 1 (2) An offer, or counteroffer, of settlement must be accompanied by a
2 copy of medical reports, assessments of cognitive, functional or
3 vocational capacity and all other material, including documents
4 relevant to assessing economic loss, in the offerer's possession or
5 control that may help the person to whom the offer is made make a
6 proper assessment of the offer.
- 7 (3) A respondent or claimant to whom a written offer, or counteroffer,
8 of settlement is made must, unless a response to the offer is to be
9 made under subsection (1) (c), respond in writing to the offer not
10 later than 3 months after the day the respondent or claimant receives
11 the offer, indicating acceptance or rejection of the offer.
- 12 (4) An admission of liability by a respondent under this section is not
13 binding on the respondent—
- 14 (a) in relation to another claim; and
- 15 (b) at all if it later appears the admission was induced by fraud.
- 16 *Note* If a respondent admits liability for a motor accident claim, the
17 respondent may be obliged to pay for the injured person's medical
18 expenses and rehabilitation services (see pt 3.6).

19 **90 Time limit exception—legal disabilities**

- 20 (1) A claimant is not required to comply with an obligation under this
21 chapter while the claimant is under a legal disability.
- 22 *Note* If the claimant is a child, under s 76 (3) a parent or guardian of the child
23 may give the notice of claim for the child.
- 24 (2) However, the period not later than which the obligation must be
25 complied with begins when the claimant's legal disability ends.
- 26 (3) This chapter applies to the claimant as if—
- 27 (a) a reference to the day the motor accident for the motor accident
28 claim happened were a reference to the day the claimant's legal
29 disability ends; and

- 1 (b) all other changes were made to give effect to this section.
- 2 (4) This section does not prevent a claimant, or a person acting for a
3 claimant, from complying with an obligation under this part while
4 the claimant is under a legal disability.
- 5 (5) In this section:
- 6 **legal disability**—a claimant is under a **legal disability** in the
7 circumstances in which a person is under a disability for the
8 *Limitation Act 1985*.
- 9 *Note* The *Limitation Act 1985*, dict, defines **under a disability**—a person is
10 **under a disability**—
- 11 (a) while the person is under 18 years old; or
- 12 (b) while the person is, for a continuous period of 28 days or longer,
13 incapable of, or substantially impeded in, the management of his
14 or her affairs in relation to the cause of proceeding in relation to
15 the limitation period for which the question of disability arises
16 because of—
- 17 (i) intellectual retardation or disability, mental illness or
18 disorder, brain damage, senility or physical disability; or
- 19 (ii) war or warlike operations; or
- 20 (iii) circumstances arising out of war or warlike operations.

21 **91 Costs awarded if noncompliance with pt 3.2—claimant**

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

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

1 **92** **Costs awarded if noncompliance with pt 3.2—respondent**

2 If a respondent does not comply with the requirements of this part, a
3 court in which the respondent defends a proceeding based on the
4 motor accident claim may, on a claimant's application in the
5 proceeding, award in the claimant's favour costs (including legal
6 and investigation costs) reasonably incurred by the claimant because
7 of the respondent's noncompliance.

1 **Part 3.3** **Obligations to give documents**
2 **and information**

3 *Note to pt 3.3*

4 The court may order a party to comply with a duty imposed under this part
5 (see s 107).

6 **93** **Purpose—pt 3.3**

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

10 **94** **What is a *required document*?**

11 In this part:

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

- 14 (a) a report, or other document, about the motor accident for the
15 motor accident claim;
- 16 (b) a report about the claimant’s medical condition or prospects of
17 rehabilitation;
- 18 (c) a report about the claimant’s cognitive, functional or
19 vocational capacity.

20 **95** **What is *relevant claim information*?**

21 In this part:

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

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

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

10 **96 Claimant to give documents and information to**
11 **respondent**

- 12 (1) A claimant for a motor accident claim must give a respondent for
13 the motor accident claim—
- 14 (a) a copy of each required document that is in the claimant's
15 possession; and
- 16 (b) if the respondent asks the claimant for the following
17 information—the following information:
- 18 (i) the circumstances of, or the reasons for, the motor
19 accident for the motor accident claim;
- 20 (ii) relevant claim information.
- 21 (2) The claimant must give the copies mentioned in subsection (1) (a) to
22 the respondent—
- 23 (a) not later than 1 month after the day the claimant gave, or is
24 taken to have given, the respondent a complying notice of
25 claim; or
- 26 (b) if a required document comes into the claimant's possession
27 later—not later than 7 days after the day the required document
28 comes into the claimant's possession.

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- 1 (3) The claimant must respond to a request under subsection (1) (b) not
2 later than 1 month after the day the claimant receives the request.
- 3 (4) If a respondent requires information given by a claimant under this
4 section to be verified by statutory declaration, the claimant must
5 verify the information by statutory declaration.
- 6 (5) If a claimant fails, without reasonable excuse, to comply fully with
7 this section, the claimant is liable for costs to the respondent
8 resulting from the failure.
- 9 *Note* The claimant may not need to give a document or information under
10 this section if the document or information is protected by client legal
11 privilege (see s 101).

12 **97 Respondent to give documents and information to**
13 **claimant**

- 14 (1) A respondent for a motor accident claim must give the claimant for
15 the motor accident claim—
- 16 (a) a copy of each required document that is—
- 17 (i) in the respondent's possession; and
- 18 (ii) directly relevant to a matter in issue in the motor accident
19 claim; and
- 20 (b) if the claimant asks the respondent for any of the following
21 information—the following information:
- 22 (i) if the information is in the respondent's possession—the
23 circumstances of, or the reasons for, the motor accident
24 for the motor accident claim; or
- 25 (ii) if the respondent is the insurer for the motor accident
26 claim—information that can be found out from the
27 insured person about the circumstances of, or the reasons
28 for, the motor accident for the motor accident claim.

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

18 *Note 1* Section 100 applies if there would be more than 200 pages of copies.

19 *Note 2* The respondent may not need to give a document or information under
20 this section if the document or information is protected by client legal
21 privilege (see s 101).

22 *Note 3* The respondent may not need to give a document or information under
23 this section if the respondent suspects the claimant of fraud (see s 103).

24 **98 Respondent to give documents and information to**
25 **contributor**

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

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- 1 (b) any relevant claim information that is in the respondent's
2 possession.
- 3 (2) The respondent must give the copies—
- 4 (a) not later than 1 month after the day the respondent gives a
5 contribution notice to the contributor; or
- 6 *Note* The respondent gives the contributor a contribution notice
7 under s 85.
- 8 (b) if a required document or relevant claim information comes
9 into the respondent's possession later—not later than 7 days
10 after the day the document or information comes into the
11 respondent's possession.
- 12 *Note 1* Section 100 applies if there would be more than 200 pages of copies.
- 13 *Note 2* The respondent may not need to give a document or information under
14 this section if the document or information is protected by client legal
15 privilege (see s 101).

16 **99 Contributor to give documents to respondent**

- 17 (1) A contributor added by a respondent for a motor accident claim
18 must give the respondent a copy of each required document that is
19 in the contributor's possession.
- 20 (2) The contributor must give the copies—
- 21 (a) not later than 1 month after the day the contributor is added as
22 a contributor; or
- 23 (b) if a required document comes into the respondent's possession
24 later—not later than 7 days after the day the required document
25 comes into the respondent's possession.
- 26 *Note 1* Section 100 applies if there would be more than 200 pages of copies.
- 27 *Note 2* The contributor may not need to give a document or information under
28 this section if the document or information is protected by client legal
29 privilege (see s 101).

- 1 **100 Alternative provision if more than 200 pages**
- 2 (1) In this section:
- 3 *relevant section* means any of the following sections:
- 4 (a) section 97 (Respondent to give documents and information to
- 5 claimant);
- 6 (b) section 98 (Respondent to give documents and information to
- 7 contributor);
- 8 (c) section 99 (Contributor to give documents to respondent).
- 9 (2) This section applies if—
- 10 (a) a relevant section requires a person (the *disclosing person*) to
- 11 give copies of reports or other documents or information
- 12 (*relevant material*) to someone else; and
- 13 (b) the total number of pages of the copies exceeds 200 pages.
- 14 (3) Not later than the day the disclosing person would, apart from this
- 15 section, be required to give relevant material to someone else under
- 16 the relevant section, the disclosing person need only offer the other
- 17 person a reasonable opportunity to inspect the material.
- 18 (4) If the other person, whether on inspection or otherwise, by written
- 19 notice given to the disclosing person, requires the disclosing person
- 20 to give the other person copies of some or all of the relevant
- 21 material, the disclosing person must comply with the requirement
- 22 not later than—
- 23 (a) if the total number of pages does not exceed 200—1 month
- 24 after the day the requirement is made; or

- 1 (b) in any other case—1 month after the day the other person pays
2 50 cents for each page by which the total number of pages
3 exceeds 200 pages.

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

7 **101 Exception to obligation—client legal privilege**

8 (1) A party is not obliged to give a document or information to another
9 party under this part if the document or information is protected by
10 client legal privilege.

11 (2) However, an investigative report, medical report or report relevant
12 to the claimant's rehabilitation must be given even though otherwise
13 protected by client legal privilege.

14 (3) A regulation may prescribe exceptions to subsection (2).

15 (4) If a report mentioned in subsection (2) must be given, the report
16 may be given with the omission of passages containing only
17 statements of opinion.

18 (5) In this section:

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

22 **102 Exception to obligation—party already has documents or
23 information**

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

- 1 **103 Exception to obligation—party suspects fraud**
- 2 (1) If a party has reasonable grounds to suspect another party of fraud,
- 3 the party may apply to the court for approval to withhold from
- 4 disclosure under this part documents or information that—
- 5 (a) would alert the other party to the suspicion; or
- 6 (b) could help further the fraud.
- 7 (2) The application may be made without notice to the other party.
- 8 (3) If the court gives approval on application under subsection (1), the
- 9 party may withhold from disclosure the documents or information in
- 10 accordance with the approval.

- 11 **104 Offence—failure to give document or information**
- 12 A person commits an offence if the person—
- 13 (a) is a party for a motor accident claim; and
- 14 (b) is obliged to give a document or information under this part;
- 15 and
- 16 (c) does not give the document or information in the way required
- 17 under this part.

18 Maximum penalty: 100 penalty units.

19 *Note 1* Penalties imposed under this Act must be paid into the nominal

20 defendant fund (see s 66).

21 *Note 2* This section does not apply if—

22 • the person is not obliged to give the document or information

23 under s 101 or s 102; or

24 • under s 103, the court has given approval for the party to withhold

25 from disclosure the documents or information.

- 1 **105 Consequences of failure to give document**
- 2 (1) This section applies if a party for a motor accident claim fails to
- 3 comply with a provision of this part requiring the party to disclose a
- 4 document or information to another party.
- 5 (2) The document or information cannot be used by the party in a later
- 6 court proceeding based on the motor accident claim, or the deciding
- 7 of the claim, unless the court orders otherwise.
- 8 (3) If the document or information comes to the other party's
- 9 knowledge, the document or information may be used by the other
- 10 party.
- 11 **106 Privilege generally for documents and information**
- 12 The documents and information given under this part are protected
- 13 by the same privileges as if disclosed in a proceeding in the
- 14 Supreme Court.

1 **Part 3.4** **Enforcement of pt 3.2 and pt 3.3**

2 *Notes to pt 3.4*

3 In addition to this part, costs may be awarded against a party who does not
4 comply with pt 3.2 (see s 91 and s 92).

5 In addition to this part, if a claimant fails to comply with s 96, the claimant may
6 liable for costs to the respondent.

7 In addition to this part, if a respondent fails to comply with s 97, the respondent
8 may be liable for costs to the claimant.

9 **107 Court's power to enforce compliance with pt 3.2 and pt**
10 **3.3**

11 (1) This section applies if a party (the *first party*) fails to comply with a
12 duty imposed under—

13 (a) part 3.2 (Motor accident claims procedures); or

14 (b) part 3.3 (Obligations to give documents and information).

15 (2) The court may, on the application of a party to whom the duty is
16 owed, order the first party to take stated action to remedy the
17 noncompliance not later than a day stated by the court.

18 (3) The court may make consequential or ancillary orders, including
19 orders about costs.

20 **108 Offence—false or misleading statements**

21 (1) A person commits an offence if—

22 (a) the person makes a statement in a notice, response or other
23 document given under—

24 (i) part 3.2 (Motor accident claims procedures); or

25 (ii) part 3.3 (Obligations on parties to give documents and
26 information); and

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

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

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

9 (2) A person commits an offence if—

10 (a) the person makes a statement in a notice, response or other
11 document given under this part; and

12 (b) the person is reckless about whether the statement—

13 (i) is false or misleading in a material particular; or

14 (ii) omits anything without which the statement is misleading
15 in a material particular.

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

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

1 **Part 3.5** **Expert reports**

2 **109** **Panel of recognised medical experts**

3 (1) The CTP regulator—

4 (a) may establish a panel of experts for reporting on the medical
5 condition of claimants and their prospects of rehabilitation; and

6 (b) must revise the membership of the panel at least once every
7 3 years by adding to, or removing, the names of the experts
8 who constitute the panel.

9 (2) In deciding on the composition of the panel, the CTP regulator—

10 (a) must consult with each professional body—

11 (i) prescribed by regulation; and

12 (ii) in the way prescribed by regulation; and

13 (b) may only include an expert on the panel if—

14 (i) the expert's inclusion is endorsed by each relevant
15 professional body; or

16 (ii) the CTP regulator is satisfied there is good reason for
17 inclusion of the expert on the panel despite the absence of
18 endorsement by each relevant professional body.

19 **110** **Parties may jointly arrange for expert report**

20 (1) The parties for a motor accident claim may jointly arrange for an
21 expert report about 1 or more of the following:

22 (a) the cause, or probable cause, of the motor accident for the
23 motor accident claim and whether, in the expert's opinion, 1 or
24 more people (who may be named) are responsible for, or
25 contributed to, the motor accident;

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

16 **111 Cost of expert report obtained by agreement**

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

23 **112 Examination by expert if no agreement**

- 24 (1) This section applies if a respondent wants to obtain an expert report
25 about 1 or more of the matters mentioned in section 110 (1) (Parties
26 may jointly arrange for expert report) but fails to obtain the
27 claimant's agreement.

- 1 (2) The claimant must comply with a request by the respondent to
2 undergo, at the respondent's expense, either or both of the
3 following:
- 4 (a) a medical examination by a doctor to be selected by the
5 claimant from a panel of at least 3 doctors with appropriate
6 qualifications and experience in the relevant field nominated
7 by the respondent in the request;
- 8 (b) an assessment of cognitive, functional or vocational capacity
9 by an expert to be selected by the claimant from a panel of at
10 least 3 experts with appropriate qualifications and experience
11 in the relevant field nominated by the respondent in the
12 request.
- 13 (3) However, a claimant is not obliged to undergo an examination or
14 assessment under this section if the examination or assessment is
15 unreasonable or unnecessarily repetitious.
- 16 (4) If 3 doctors or experts with appropriate qualifications and
17 experience in the relevant field are not available for inclusion on a
18 panel under subsection (2), the number on the panel may be reduced
19 to 2.

1 **Part 3.6** **Respondent to pay for medical**
2 **expenses and rehabilitation**
3 **services**

4 **Division 3.6.1** **Claimant to give documents**

5 **113** **Claimant to give documents to respondent**

6 A claimant is entitled to payment for expenses under this part only
7 if—

- 8 (a) both of the following have been given to the respondent:
- 9 (i) a form about the motor accident (a *motor accident*
10 *notification form*) completed by or for the injured person;
- 11 (ii) a medical report (a *motor accident medical report*)
12 prepared by a doctor about the personal injuries caused to
13 the injured person by the motor accident; and
- 14 (b) the motor accident notification form and motor accident
15 medical report are given to the respondent not later than
16 28 days after the motor accident; and
- 17 (c) the motor accident notification form contains a declaration by
18 or for the injured person that the motor accident was not
19 caused wholly or mainly by the fault of the injured person.

20 *Note* If a form is approved under s 266 for a motor accident notification form
21 or a motor accident medical report, the form must be used.

1 **Division 3.6.2 Medical expenses**

2 **114 What are *medical expenses*?**

3 In this chapter:

4 *medical expenses* includes hospital and pharmaceutical expenses.

5 **115 Preconditions to payment of medical expenses**

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

8 (a) the respondent for the motor accident claim admits liability for
9 the motor accident claim; and

10 (b) either—

11 (i) a police officer attended the motor accident for the motor
12 accident claim; or

13 (ii) the motor accident was officially reported to a police
14 officer by or for the injured person.

15 **116 Respondent to pay injured person's medical expenses**

16 (1) The respondent must pay—

17 (a) the injured person's medical expenses that are reasonably
18 incurred because of the personal injury caused by the motor
19 accident for the motor accident claim; or

20 (b) a proportion of the medical expenses reflecting the extent of
21 the respondent's responsibility (assuming the claimant to be
22 guilty of contributory negligence as asserted by the
23 respondent).

1 (2) The respondent must make a payment under this section on
2 presentation of an account made up, and verified, as prescribed by
3 regulation.

4 *Note 1* Payments under this section may be recoverable under part 3.11.

5 *Note 2* It is a condition of a CTP insurer licence that the licensed insurer must
6 comply with this section (see s 178).

7 **Division 3.6.3 Rehabilitation services**

8 **117 What is *rehabilitation*?**

9 In this chapter:

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

13 (a) to restore, as far as reasonably possible, physical or mental
14 functions lost or impaired through personal injury; or

15 (b) to optimise, as far as reasonably possible, the quality of life of
16 a person who suffers the loss or impairment of physical or
17 mental functions through personal injury.

18 **118 What are *rehabilitation services*?**

19 In this Act:

20 *rehabilitation services* means services for providing rehabilitation to
21 a person.

22 **119 What are *provided rehabilitation services*?**

23 In this division:

24 *provided rehabilitation services* means rehabilitation services made
25 available by a respondent to a claimant under section 120 or
26 section 121.

-
- 1 **120 Respondent may make rehabilitation services available**
- 2 (1) A respondent may make rehabilitation services available to a
- 3 claimant on the respondent's own initiative or at the claimant's
- 4 request.
- 5 (2) If a respondent makes rehabilitation services available to a claimant
- 6 before admitting or denying liability for a motor accident claim, the
- 7 respondent must not be taken, for that reason, to have admitted
- 8 liability.
- 9 **121 Respondent to make rehabilitation services available**
- 10 (1) This section applies if a respondent—
- 11 (a) admits liability for a motor accident claim; or
- 12 (b) agrees to pay for rehabilitation services without admitting
- 13 liability.
- 14 *Note* The respondent must tell the claimant in the response to the notice of
- 15 claim whether the respondent is prepared to meet the reasonable and
- 16 appropriate cost of the claimant's rehabilitation (without admitting
- 17 liability) (see s 82).
- 18 (2) The respondent must, at the claimant's request, ensure that
- 19 reasonable and appropriate rehabilitation services are made
- 20 available to the claimant.
- 21 *Note* It is a condition of a CTP insurer licence that the licensed insurer must
- 22 comply with this section (see s 178).
- 23 **122 Respondent to give assessment of damages notice**
- 24 (1) This section applies if a respondent intends to—
- 25 (a) make rehabilitation services available to a claimant under
- 26 section 120 or section 121.
- 27 (b) ask the court to take the cost of rehabilitation services into
- 28 account in the assessment of damages.

- 1 (2) The respondent must, before providing the rehabilitation services,
2 give the claimant, written notice (an *assessment of damages notice*)
3 that includes—
- 4 (a) an estimate of the cost of the rehabilitation services; and
5 (b) a statement explaining how, and to what extent, the assessment
6 of damages is likely to be affected by the provision of the
7 rehabilitation services.

8 **123 Cost of services and assessment of damages**

- 9 (1) The cost to the respondent of providing the rehabilitation services
10 may be taken into account in the assessment of damages for the
11 motor accident claim only if the respondent has given the claimant
12 an assessment of damages notice under section 122.
- 13 (2) If the cost of rehabilitation services is to be taken into account in the
14 assessment of damages, the cost is taken into account as follows:
- 15 (a) the claimant's damages are first assessed (without reduction for
16 contributory negligence) on the assumption that the claimant
17 has incurred the cost of the rehabilitation services as a result of
18 the personal injury caused by the motor accident;
- 19 (b) any reduction to be made on account of contributory
20 negligence is then made;
- 21 (c) the total cost of rehabilitation services is then set-off against
22 the amount assessed.

23 **124 Reasonable and appropriate services—mediation**

- 24 (1) If the claimant is not satisfied that provided rehabilitation services
25 are reasonable and appropriate, the claimant may apply to the
26 CTP regulator to appoint a mediator to help resolve the questions
27 between the claimant and respondent.

-
- 1 (2) An application for appointment of a mediator must—
2 (a) be made in writing; and
3 (b) give details of any attempts made by the claimant to resolve
4 the matter in dispute.
5 (3) The fees and expenses of the mediator must be paid as agreed
6 between the parties or, if there is no agreement, by the parties in
7 equal proportions.

8 **125 Reasonable and appropriate services—court proceeding**

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

19 **126 Respondent to pay for rehabilitation services**

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

- 22 (a) by agreement with the claimant; or
23 (b) by order of the court under section 128 (Cost of rehabilitation
24 services—court proceeding).

25 *Note 1* Costs paid under this section may be recoverable under part 3.11.

26 *Note 2* It is a condition of a CTP insurer licence that the licensed insurer must
27 comply with this section (see s 178).

- 1 **127 Cost of rehabilitation services—mediation**
- 2 (1) If the respondent considers that the cost of provided rehabilitation
- 3 services is unreasonable, the respondent may apply to the
- 4 CTP regulator to appoint a mediator to help resolve the questions
- 5 between the claimant and the respondent.
- 6 (2) An application for appointment of a mediator must—
- 7 (a) be made in writing; and
- 8 (b) give details of any attempts made by the claimant to resolve
- 9 the matter in dispute.
- 10 (3) The fees and expenses of the mediator must be paid as agreed
- 11 between the parties or, if there is no agreement, by the parties in
- 12 equal proportions.
- 13 **128 Cost of rehabilitation services—court proceeding**
- 14 (1) If the respondent considers that the cost of provided rehabilitation
- 15 services is unreasonable, the respondent may apply to the court to
- 16 decide—
- 17 (a) what rehabilitation services are, in the circumstances of the
- 18 case, reasonable and appropriate; or
- 19 (b) to what extent the respondent should contribute to the cost of
- 20 rehabilitation services.
- 21 (2) A respondent may apply to the court whether or not there has been
- 22 an earlier attempt to resolve the questions between the respondent
- 23 and the claimant by mediation.
- 24 (3) On application, the court may decide the questions raised on the
- 25 application and make consequential orders and directions.

1 **Division 3.6.4 Medical and rehabilitation guidelines**

2 **129 CTP regulator may make medical and rehabilitation**
3 **guidelines**

4 (1) The CTP regulator may make guidelines (*medical and*
5 *rehabilitation guidelines*) for the following:

6 (a) the medical treatment of injured people;

7 (b) the provision of rehabilitation services for injured people
8 (including the circumstances in which rehabilitation services
9 must be provided);

10 (c) the assessment of the degree of permanent impairment of an
11 injured person as a result of an personal injury caused by a
12 motor accident.

13 *Note* It is a condition of a CTP insurer licence that the licensed insurer must
14 comply with this the medical and rehabilitation guidelines (see s 178).

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

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

18 (3) Medical and rehabilitation guidelines—

19 (a) must not be construed as requiring medical treatment to be
20 carried out in accordance with medical and rehabilitation
21 guidelines; and

22 (b) must be consistent with a high standard of medical care, dental
23 care, rehabilitation, aftercare and continuing care as exists in
24 the community at that time.

25 (4) Medical and rehabilitation guidelines must be developed in
26 consultation with—

27 (a) relevant medical colleges including the following:

28 (i) the Royal Australasian College of Physicians;

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- 1 (ii) the Royal Australasian College of Surgeons;
2 (iii) the Royal Australian College of General Practitioners;
3 (iv) the Australian Orthopaedic Association; and
4 (b) other relevant colleges and associations including the
5 paramedical professional associations; and
6 (c) anyone else prescribed by regulation.

1 **Part 3.7** **Compulsory conferences before**
2 **court proceedings**

3 **130 Compulsory conference**

- 4 (1) Before a claimant for a motor accident claim brings a court
5 proceeding based on the motor accident claim, the parties for the
6 motor accident claim must have a conference (the *compulsory*
7 *conference*).
- 8 (2) Any party may call the compulsory conference—
9 (a) at a time and place agreed by each party; or
10 (b) if more than 6 months has passed since the respondent
11 received, or is taken to have received, the claimant's
12 complying notice of claim—at a reasonable time and place
13 nominated by the party calling the conference.
- 14 *Note* The circumstances in which a claimant is taken to have given a
15 respondent a complying notice of claim are in s 87.
- 16 (3) On application by a party, the court may decide the time and place
17 for the compulsory conference and make any other orders the court
18 considers appropriate in the circumstances.
- 19 (4) The parties may, by agreement, change the time or place for holding
20 a compulsory conference or adjourn a compulsory conference from
21 time to time and from place to place.
- 22 (5) The compulsory conference may be conducted, if the parties agree,
23 by telephone, closed-circuit television or another form of
24 communication allowing contemporaneous and continuous
25 communication between the parties.

1 **131 Compulsory conference may be dispensed with**

- 2 (1) On application by 1 or more of the parties for the motor accident
3 claim, the court may dispense with the compulsory conference for
4 good reason and make any other orders the court considers
5 appropriate in the circumstances.
- 6 (2) In considering whether to dispense with the compulsory conference,
7 the court must take into account the extent of compliance by the
8 parties with their respective obligations for the motor accident
9 claim.

10 **132 Compulsory conference mediator**

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

23 **133 Procedures before compulsory conference**

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

- 1 (b) a statement verifying that all relevant documents in the
2 possession of the party or the party's lawyer have been given
3 as required;
- 4 (c) details of the party's legal representation;
- 5 (d) if the party has legal representation—a certificate of readiness
6 signed by the party's lawyer.
- 7 (2) However, on application by a party, the court may exempt the party
8 from an obligation to give material to another party before trial if
9 satisfied that—
- 10 (a) giving the material would alert a person reasonably suspected
11 of fraud to the suspicion; or
- 12 (b) there is some other good reason why the material should not be
13 given.
- 14 (3) In this section:
- 15 ***certificate of readiness***, by a party to a motor accident claim, means
16 a certificate stating that—
- 17 (a) the party is in all respects ready for—
- 18 (i) the compulsory conference; and
- 19 (ii) the trial; and
- 20 (b) the party has obtained all investigative material required for the
21 trial including witness statements from each person (other than
22 expert witnesses) the party intends to call as a witness at the
23 trial; and
- 24 (c) the party has obtained medical or other expert reports from
25 each person the party proposes to call as an expert witness at
26 the trial; and

- 1 (d) the party has fully complied with the party's obligations to give
2 the other parties material relevant to the motor accident claim;
3 and
- 4 (e) the party's lawyer has given the party a costs statement.
- 5 **costs statement**, by a party's lawyer, means a statement
6 containing—
- 7 (a) details of the legal costs (clearly identifying costs that are legal
8 fees and costs that are disbursements) payable by the party to
9 the party's lawyer up to the completion of the conference; and
- 10 (b) an estimate of the party's likely legal costs (clearly identifying
11 costs that are legal fees and costs that are disbursements) if the
12 motor accident claim proceeds to trial and is decided by the
13 court; and
- 14 (c) a statement of the consequences to the party, in terms of costs,
15 in each of the following cases:
- 16 (i) if the amount of the damages awarded by the court is
17 equal to, or more than, the claimant's mandatory final
18 offer;
- 19 (ii) if the amount of the damages awarded by the court is less
20 than the claimant's mandatory final offer but equal to, or
21 more than, the respondent's mandatory final offer;
- 22 (iii) if the amount of the damages awarded by the court is
23 equal to, or less than, the respondent's mandatory final
24 offer.
- 25 *Note* **Mandatory final offers** are dealt with in pt 3.8.

- 1 **134 Attendance and participation at compulsory conference**
- 2 (1) Each conference participant must, unless the conference participant
- 3 has a reasonable excuse—
- 4 (a) attend the compulsory conference; and
- 5 (b) actively take part in an attempt to settle the motor accident
- 6 claim.
- 7 (2) In this section:
- 8 *conference participant* means—
- 9 (a) the claimant or the claimant’s guardian; and
- 10 (b) a person authorised by a respondent or contributor to settle the
- 11 motor accident claim on the respondent’s or contributor’s
- 12 behalf.

1 **Part 3.8** **Mandatory final offers**

2 **135** **Mandatory final offers**

- 3 (1) This section applies if, for a motor accident claim—
- 4 (a) the compulsory conference has been dispensed with under
- 5 section 131 (Compulsory conference may be dispensed with);
- 6 or
- 7 (b) the motor accident claim is not settled at the compulsory
- 8 conference.
- 9 (2) The claimant and the respondent for the motor accident claim must
- 10 exchange written final offers (each of which is a *mandatory final*
- 11 *offers*).
- 12 (3) However, if a respondent denies liability altogether, the respondent
- 13 must give the claimant a written notice of denial (a *mandatory final*
- 14 *notice*).
- 15 (4) If the respondent gives the claimant a mandatory final notice, for
- 16 this Act, the respondent is taken to have given the claimant a
- 17 mandatory final offer of \$0.

18 **136** **Mandatory final offers may be dispensed with**

19 The court may, on application by the claimant or the respondent for

20 the motor accident claim, dispense with the obligation to exchange

21 mandatory final offers.

1 **137 Timing of mandatory final offers**

2 (1) If the court has not dispensed with the obligation to exchange
3 mandatory final offers, mandatory final offers for a motor accident
4 claim must be exchanged—

5 (a) if the compulsory conference has been dispensed with—not
6 later than 14 days after the day the conference was dispensed
7 with; or

8 *Note* A compulsory conference may be dispensed with by agreement or
9 by court order (see s 131).

10 (b) if the claim is not settled at the compulsory conference—at the
11 end of the conference.

12 (2) A mandatory final offer remains open for 14 days.

13 **138 Working out costs for mandatory final offers**

14 (1) A mandatory final offer for \$50 000 or less must be exclusive of
15 costs.

16 (2) If a mandatory final offer is for more than \$30 000 but not more
17 than \$50 000, and is accepted, costs must be worked out and paid in
18 the way prescribed by regulation.

19 **139 Court proceedings not to begin if mandatory final offer
20 open**

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

24 *Note* A mandatory final offer remains open for 14 days (see s 137).

25 (2) If a claimant brings a court proceeding based on a motor accident
26 claim, the claimant must, at the beginning of the proceeding, file in
27 the court a sealed envelope containing a copy of the claimant's
28 mandatory final offer.

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

1 **Part 3.9** **Court proceedings**

2 **140** **Time limit for beginning proceeding**

- 3 (1) This section applies if a claimant for a motor accident claim does
4 not begin a court proceeding based on the motor accident claim in
5 accordance with the time limits in the following sections:
- 6 (a) section 141 (Time limit—compulsory conference);
 - 7 (b) section 142 (Time limit—no compulsory conference);
 - 8 (c) section 143 (Time limit—no mandatory final offers).
- 9 (2) The claimant may still begin the proceeding but the court may order
10 the claimant to pay the respondent's costs caused by the delay.
- 11 (3) The respondent may apply to the court for an order deciding a time
12 by which the claimant must begin the proceeding.
- 13 (4) If the claimant does not begin a proceeding in accordance with a
14 court order made on application under subsection (3), the motor
15 accident claim is barred.

16 **141** **Time limit—compulsory conference**

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

22 *Note* A court may dispense with the obligation to exchange mandatory final
23 offers under s 136.

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- 1 (2) The claimant may only begin a court proceeding based on the motor
2 accident claim not later than—
3 (a) 60 days after the end of the compulsory conference; or
4 (b) a later day—
5 (i) agreed by the parties not later than 60 days after the end
6 of the compulsory conference; or
7 (ii) decided by the court on application by the claimant not
8 later than 60 days after the end of the compulsory
9 conference.

10 *Note* The claimant may still be able to begin a court proceeding based on the
11 motor accident claim under s 140.

12 **142 Time limit—no compulsory conference**

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

18 *Note 1* A compulsory conference may be dispensed with by agreement or by
19 court order (see s 131).

20 *Note 2* A court may dispense with the obligation to exchange mandatory final
21 offers (see s 136).

- 22 (2) The claimant may only begin a court proceeding based on the motor
23 accident claim not later than—
24 (a) the due date; or
25 (b) a later day—
26 (i) agreed by the parties not later than the due date; or

- 1 (ii) decided by the court on application by the claimant not
2 later than the due date.

3 *Note* The claimant may still be able to begin a court proceeding based on the
4 motor accident claim under s 140.

- 5 (3) In this section:

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

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

9 *Note* The circumstances in which a claimant is taken to have given a
10 respondent a complying notice of claim are in s 87.

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

12 *Note* A compulsory conference may be dispensed with by agreement or
13 by court order (see s 131).

14 **143 Time limit—no mandatory final offers**

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

17 *Note* A court may dispense with the obligation under s 136.

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

21 *Note* The claimant may still be able to begin a court proceeding based on the
22 motor accident claim under s 140.

23 **144 Need for urgent proceeding**

- 24 (1) The court, on application by a claimant, may give leave to the
25 claimant to begin a proceeding in the court based on a motor
26 accident claim despite noncompliance with this part if satisfied there
27 is an urgent need to begin the proceeding.

- 1 (2) The order giving leave may be made on conditions the court
2 considers appropriate having regard to the circumstances of the
3 case.
- 4 (3) If leave is given, the proceeding started by leave is stayed until the
5 claimant complies with this part or the proceeding is discontinued or
6 otherwise ends.
- 7 (4) However, the proceeding is not stayed if—
- 8 (a) the court is satisfied that—
- 9 (i) the claimant is suffering from a terminal condition; and
- 10 (ii) the trial of the proceeding should be expedited; and
- 11 (b) the court orders the proceeding be given priority in the
12 allocation of a trial date.
- 13 (5) If, under subsection (4), the proceeding is not stayed, this part (other
14 than this section) does not apply to the personal injury.

15 **145 Insurer to be joint or sole defendant**

- 16 (1) This section applies if—
- 17 (a) a claimant brings a court proceeding based on a motor accident
18 claim; and
- 19 (b) the respondent is an insured person or an insurer for the motor
20 accident claim.
- 21 (2) The claimant must bring the proceeding against the insured person
22 and the insurer as joint defendants.
- 23 (3) However, the claimant may bring a proceeding against the insurer
24 alone if—
- 25 (a) the insured person cannot be identified; or
- 26 (b) the insured person is dead; or

- 1 (c) it is impracticable to give the insured person a legal document.
- 2 (4) If judgment is given in favour of the claimant on the motor accident
3 claim for the personal injury, the judgment must be given against
4 the insurer and not the insured person, and, if the proceeding
5 involves other claims (unrelated to the personal injury), a separate
6 judgment must be given on the other claims.
- 7 (5) It is not a defence to a proceeding under this section if the insurer
8 proves that—
- 9 (a) a CTP policy was obtained by fraud, or a material
10 misstatement or nondisclosure; or
- 11 (b) the insured person is in breach of a contractual or statutory
12 obligation.

13 **146 Procedure if respondent is insurer**

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

1 **147 Exclusion of summary judgment on the basis of**
2 **admissions**

- 3 (1) In a court proceeding based on a motor accident claim, summary
4 judgment is not to be given on the basis of the defendant's
5 admissions.
- 6 (2) However, this section does not prevent a court from giving a
7 judgment by consent.

8 **148 Insurer's right to call and cross-examine insured person**

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

13 *Note* In most cases, the claimant must bring the proceeding against the
14 insured person and the insurer as joint defendants (see s 145).

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

18 **149 Costs—small awards of damages—generally**

- 19 (1) This section applies if a court awards \$50 000 or less in damages in
20 a proceeding (other than an appellate proceeding) based on a motor
21 accident claim.
- 22 (2) If the court awards \$30 000 or less, the court must apply the
23 following principles:
- 24 (a) if the amount awarded is less than the claimant's mandatory
25 final offer but more than the respondent's mandatory final
26 offer, no costs are to be awarded;

- 1 (b) if the amount awarded is equal to, or more than, the claimant's
2 mandatory final offer, costs must be awarded to the claimant in
3 the way prescribed by regulation as from the date on which the
4 proceeding began (but no award is to be made for costs up to
5 that date);
- 6 (c) if the amount awarded is equal to, or less than, the
7 respondent's mandatory final offer, costs must be awarded to
8 the respondent as prescribed by regulation.
- 9 (3) If the court awards more than \$30 000 but not more than \$50 000 in
10 damages, the court must apply the following principles:
- 11 (a) if the amount awarded is less than the claimant's mandatory
12 final offer but more than the respondent's mandatory final
13 offer, costs must be awarded to the claimant in accordance
14 with the *Civil Law (Wrongs) Act 2002*, chapter 14, up to the
15 maximum amount prescribed by regulation or, if no amount is
16 prescribed, \$2 500;
- 17 (b) if the amount awarded is equal to, or more than, the claimant's
18 mandatory final offer, costs must be awarded to the claimant as
19 follows:
- 20 (i) costs up to the date on which the proceeding began must
21 be awarded in accordance with the *Civil Law (Wrongs)*
22 *Act 2002*, chapter 14, up to the maximum amount
23 prescribed by regulation or, if no amount is prescribed,
24 \$2 500;
- 25 (ii) costs on or after the date on which the proceeding began
26 must be awarded on an indemnity basis;

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- 1 (c) if the amount awarded is equal to, or less than, the
2 respondent's mandatory final offer, costs must be awarded as
3 follows:
- 4 (i) costs up to the date on which the proceeding began must
5 be awarded to the claimant in accordance with the *Civil*
6 *Law (Wrongs) Act 2002*, chapter 14, up to the maximum
7 amount prescribed by regulation or, if no amount is
8 prescribed, \$2 500;
- 9 (ii) costs on or after the date on which the proceeding began
10 must be awarded to the respondent in accordance with the
11 *Civil Law (Wrongs) Act 2002*, chapter 14.
- 12 (4) This section is subject to section 150.

13 **150 Costs—small awards of damages—exceptions**

- 14 (1) This section applies if a court awards \$50 000 or less in damages in
15 a proceeding (other than an appellate proceeding) based on a motor
16 accident claim.
- 17 (2) This section applies in addition to section 149.
- 18 (3) The court may make an award of costs to compensate a party for
19 costs resulting from a failure by another party to comply with a
20 procedural obligation under this part.
- 21 (4) The court must not award costs to a party related to the introduction
22 of evidence by the party that is unnecessarily repetitive.

23 **Example**

24 If a claimant calls 2 or more expert witnesses from the same area of expertise to
25 give evidence to substantially the same effect, and the claimant is entitled to costs
26 under s 149, the court must only allow costs related to 1 of the expert witnesses.

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

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

5 (a) the end of the compulsory conference; or

6 (b) if the parties or the court dispenses with a compulsory
7 conference—the date when the parties completed the exchange
8 of mandatory final offers.

9 *Note* A compulsory conference may be dispensed with by agreement or by
10 court order (see s 131).

11 (6) If an award of damages is affected by factors that were not
12 reasonably foreseeable by a party at the time of making the party's
13 mandatory final offer, the court may, if satisfied that it is just to do
14 so, make an order for costs under section 149 (2) or (3) as if the
15 reference to a mandatory final offer in the relevant subsection were
16 a reference to a later offer made in the light of the factors that
17 became apparent after the parties completed the exchange of
18 mandatory final offers.

19 **Example**

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

1 **Part 3.10** **Judgment for noncompliance**
2 **with time limits**

3 **151** **Definitions—pt 3.10**

4 In this part:

5 *compliance notice*—see section 152.

6 *enforcing party*—see section 152.

7 *late party*—see section 152.

8 *relevant notice claim*—see section 153.

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

11 **152** **Notice time limit not complied with**

12 (1) This section applies if—

13 (a) for a motor accident claim—

14 (i) the respondent has given the claimant a mandatory final
15 notice under section 135; or

16 (ii) the court has dispensed with the obligation to exchange
17 mandatory final offers under section 136; or

18 (iii) the time for exchanging mandatory final offers under
19 section 137 has closed; and

20 (b) a party (the *late party*) to the claim fails to do something
21 required to be done within a time limit for doing the thing
22 under this Act.

23 (2) However, this section does not apply if—

24 (a) the late party is the claimant; and

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

6 **153 Thing not done within 7-day period—claimant as**
7 **enforcing party**

- 8 (1) This section applies if—
9 (a) an enforcing party has given a late party a compliance notice;
10 and
11 (b) the late party does not do the required thing within the 7-day
12 period in the notice; and
13 (c) the enforcing party is the claimant to the motor accident claim
14 (the *relevant notice claim*) to which the notice relates.
15 (2) The enforcing party may, not later than 14 days after the day the
16 7-day period ends, apply to the court for an order—
17 (a) if the claimant has not started a proceeding based on the
18 relevant notice claim—giving the claimant leave to begin the
19 proceeding; and
20 (b) giving judgment in the proceeding in favour of the claimant
21 against the respondent.

22 **154 Thing not done within 7-day period—respondent as**
23 **enforcing party**

- 24 (1) This section applies if—
25 (a) an enforcing party has given a late party a compliance notice;
26 and

- 1 (b) the late party does not do the required thing within the 7-day
2 period in the notice; and
- 3 (c) the enforcing party is the respondent to the relevant notice
4 claim.
- 5 (2) The enforcing party may, not later than 14 days after the day the
6 7-day period ends, apply to the court for an order—
- 7 (a) if the claimant has not started a proceeding based on the
8 relevant notice claim—that the claimant is barred from
9 beginning the proceeding; or
- 10 (b) giving judgment in the proceeding in favour of the respondent
11 against the claimant.

12 **155 Thing not done within 7-day period—court may make**
13 **orders**

- 14 (1) On application for judgment under section 153 or section 154, the
15 court may make the orders sought.
- 16 (2) In considering the application, the court must not make an order
17 against the late party if the party establishes that the party had a
18 reasonable excuse for failing to do the required thing within the
19 7-day period.

20 **156 Court orders in favour of claimant**

- 21 (1) This section applies if the court makes an order giving judgment in
22 favour of the claimant against the respondent.
- 23 (2) The court must order—
- 24 (a) if the claimant and respondent have each made a written offer
25 to the other party—damages worked out by adding the
26 claimant's last written offer to the respondent's last written
27 offer and dividing the total by 2; or

- 1 (b) if 1 of the parties has not made a written offer—damages to be
2 assessed by the court.
- 3 (3) The court must order the respondent to pay the claimant's costs on
4 an indemnity basis from the day the complying claim was received
5 by the respondent's insurer.

6 **157 Court orders in favour of respondent**

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

1 **Part 3.11 CTP insurer and nominal**
2 **defendant may recover costs**
3 **incurred**

4 **Division 3.11.1 Preliminary**

5 **158 What are costs?**

6 In this part:

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

9 (a) the amount paid out by the insurer on the claim to the claimant
10 or for the claimant's benefit, including—

11 (i) the cost to the insurer of paying medical expenses for the
12 claim; and

13 (ii) the cost to the insurer of providing rehabilitation services
14 for the claim; and

15 *Note* Medical expenses and rehabilitation services are dealt with in pt
16 3.6.

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

20 **159 Insurer may only recover costs once**

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

1 **160 Proceeding to recover costs**

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

4 **Division 3.11.2 CTP insurers**

5 **161 CTP insurer may recover excess if 25% fault**

6 (1) This section applies if—

7 (a) personal injury is caused by a motor accident involving a
8 CTP insured person; and

9 (b) the CTP insured person is more than 25% at fault for the motor
10 accident.

11 (2) The CTP insurer for the CTP insured person may recover as a debt
12 from the CTP insured person—

13 (a) if the costs reasonably incurred by the CTP insurer for a motor
14 accident claim for the motor accident are not more than \$500—
15 the total of the costs incurred; or

16 (b) if the costs reasonably incurred by the CTP insurer for a motor
17 accident claim for the motor accident are more than \$500—
18 \$500.

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

21 *Note 2* *Costs* include medical expenses and rehabilitation costs (see s 158).

22 **162 CTP insurer may recover \$2 000 if CTP premium fraud**

23 (1) This section applies if—

24 (a) personal injury is caused by a motor accident involving a
25 CTP insured person; and

- 1 (b) the CTP insured person deliberately avoided paying the correct
2 CTP premium for the CTP policy by making a statement in
3 relation to the issue of the policy that the CTP insured person
4 knew was false or misleading in a material particular.
- 5 (2) The CTP insurer may recover as a debt from the CTP insured
6 person—
- 7 (a) if the costs reasonably incurred by the CTP insurer for a motor
8 accident claim for the motor accident are not more than
9 \$2 000—the total of the amount paid and costs incurred; or
- 10 (b) if the costs reasonably incurred by the CTP insurer for a motor
11 accident claim for the motor accident are more than \$2 000—
12 \$2 000.

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

15 *Note 2* *Costs* include medical expenses and rehabilitation costs (see s 158).

16 **163 CTP insurer may recover costs if no authority to use**
17 **vehicle**

- 18 (1) This section applies if—
- 19 (a) personal injury is caused by a motor accident involving a
20 CTP insured person; and
- 21 (b) the CTP insured person was, at the time of the motor accident,
22 using the motor vehicle—
- 23 (i) without the owner's authority; and
- 24 (ii) without lawful justification or excuse; and
- 25 (iii) without reasonable grounds for believing that the
26 CTP insured person had the owner's authority, or lawful
27 justification or excuse, for using the motor vehicle.

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

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

6 **164 CTP insurer may recover costs if injury intentional**

- 7 (1) This section applies if—
8 (a) personal injury is caused by a motor accident involving a
9 CTP insured person; and
10 (b) the CTP insured person intended to injure the claimant or
11 someone else.

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

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

17 **165 CTP insurer may recover costs if driver using alcohol or**
18 **drugs**

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

- 1 (ii) a non-medicinal drug or a combination of non-medicinal
2 drugs; or
- 3 (iii) a combination of alcohol and 1 or more non-medicinal
4 drugs.
- 5 (2) The CTP insurer may recover as a debt from the CTP insured person
6 any costs reasonably incurred by the CTP insurer for a motor
7 accident claim for the personal injury if the costs are reasonably
8 attributable to the CTP insured person's inability to exercise
9 effective control of the motor vehicle.
- 10 (3) In this section:
- 11 *non-medicinal drug* means a drug other than a drug genuinely and
12 lawfully ingested for medical or therapeutic purposes.
- 13 *Note* A CTP policy insures against the risk of liability for personal injury
14 caused by a motor accident (see s 21).

15 **Division 3.11.3 CTP insurer and nominal defendant**

16 **166 Insurer may recover costs if motor vehicle defective**

- 17 (1) This section applies if—
- 18 (a) personal injury is caused by a motor accident involving an
19 insured person; and
- 20 (b) the motor accident is attributable wholly or partly to a defect in
21 a motor vehicle; and
- 22 (c) the defect arose from the wrongful act or omission of the
23 manufacturer or a person who carries on a business of repairing
24 motor vehicles.

1 (2) The insurer may recover as a debt from the manufacturer or repairer
2 the proportion of the costs reasonably incurred by the insurer for a
3 motor accident claim for the personal injury that reasonably reflects
4 the degree of the manufacturer's or repairer's responsibility for the
5 motor accident.

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

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

11 *Note 2* An amount recovered under this section by the nominal defendant must
12 be paid into the nominal defendant fund (see s 66).

13 **167 Insurer may recover costs if fraud**

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

18 *Note* An amount recovered under this section by the nominal defendant must
19 be paid into the nominal defendant fund (see s 66).

20 **Division 3.11.4 Nominal defendant**

21 **168 Nominal defendant may recover costs from owner or** 22 **driver**

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

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

- 1 (2) The nominal defendant may recover as a debt from the owner or
2 driver of the vehicle (or both) any costs reasonably incurred by the
3 nominal defendant for a motor accident claim for the personal
4 injury.
- 5 (3) It is a defence to a proceeding under this section against the owner
6 for the owner to prove that—
- 7 (a) the motor vehicle was driven without the owner’s authority; or
8 (b) the owner believed on reasonable grounds that the motor
9 vehicle was insured.
- 10 (4) It is a defence to a proceeding under this section against the driver
11 for the driver to prove that the driver believed on reasonable
12 grounds that—
- 13 (a) the driver had the owner’s consent to drive the motor vehicle;
14 and
15 (b) the motor vehicle was insured.
- 16 (5) The nominal defendant may bring a proceeding for recovery of costs
17 under this section before the costs have been actually paid in full
18 and, in that case, a judgment for recovery of costs may provide that,
19 as far as the costs have not been actually paid, the right to recover
20 the costs is contingent on payment.
- 21 (6) This section does not affect a right of recovery that the nominal
22 defendant may have, apart from this section, against the insured
23 person.
- 24 *Note* An amount recovered under this section must be paid into the nominal
25 defendant fund (see s 66).

1 **169** **Nominal defendant—access to territory information etc**

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

1 **Part 3.12** **Other matters**

2 **170** **Insurer to deter fraudulent motor accident claims**

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

1 **Chapter 4 Licensing of insurers**

2 **Part 4.1 Important concepts**

3 **171 What is a *CTP insurer licence*?**

4 In this Act:

5 *CTP insurer licence*, for a corporation, means a licence issued
6 under section 177 (Decision on application) to carry on business as a
7 CTP insurer.

8 **172 Meaning of *former licensed insurer* and *licensed insurer***

9 In this Act:

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

12 *licensed insurer* means a corporation that holds a CTP insurer
13 licence.

14 **173 Offence—unlicensed insurer issues CTP policy**

15 (1) A person commits an offence if the person—

16 (a) issues a CTP policy; and

17 (b) is not a licensed insurer.

18 Maximum penalty: 100 penalty units.

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

21 (2) A person commits an offence if the person—

22 (a) purports to issue a CTP policy; and

1 (b) is not a licensed insurer.

2 Maximum penalty: 100 penalty units.

3 **174 Unlicensed insurer liable for CTP policy**

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

1 **Part 4.2** **Application for CTP insurer**
2 **licence**

3 **175 Licence—application**

- 4 (1) A corporation may apply to the CTP regulator for a CTP insurer
5 licence.
- 6 (2) The application must comply with the requirements prescribed by
7 regulation.
- 8 (3) The CTP regulator may, in writing, ask the applicant to give the
9 CTP regulator more information that the CTP regulator reasonably
10 needs to decide the application, including the following:
- 11 (a) details of the shareholders, directors and other managers of the
12 applicant;
- 13 (b) any previous returns and accounts under—
14 (i) the Corporations Act; and
15 (ii) the *Insurance Act 1973* (Cwlth);
- 16 (c) details of reinsurance arrangements to which the applicant is a
17 party;
- 18 *Note* Reinsurance arrangements are further dealt with in s 209.
- 19 (d) a draft business plan.
- 20 *Note* Business plans are dealt with in s 202.
- 21 (4) The CTP regulator need not decide whether the corporation is
22 eligible for a CTP insurer licence if—
- 23 (a) the corporation's application does not comply with any
24 requirement prescribed by regulation; or

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

3 *Note 1* If a form is approved under s 266 for an application, the form must be
4 used.

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

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

9 **176 Licence—eligibility**

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

12 (a) authorised under the *Insurance Act 1973* (Cwlth) to carry on
13 insurance business; and

14 (b) a party to the insurance industry deed.

15 **177 Decision on licence application**

16 (1) On an application by a corporation for a licence, the CTP regulator
17 must—

18 (a) issue the licence; or

19 (b) refuse to issue the licence if the CTP regulator—

20 (i) is not satisfied that the applicant would not, or would not
21 be able to, properly exercise the functions of a licensed
22 insurer if issued with a licence; or

23 (ii) must not issue the licence under subsection (4).

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

- 1 (2) In deciding whether the applicant would not, or would not be able
2 to, properly exercise the functions of a licensed insurer if issued
3 with a licence, the CTP regulator must consider the following:
- 4 (a) the paid-up share capital and reserves of the applicant;
5 (b) the constitution of the applicant (if any);
6 (c) the reinsurance arrangements of the applicant;
7 (d) whether issuing the licence will contribute to the efficiency of
8 the motor accidents scheme under this Act generally;
9 (e) anything else prescribed by regulation.
- 10 (3) The CTP regulator may consider anything else the CTP regulator
11 considers appropriate for this Act.
- 12 (4) The CTP regulator must refuse to issue a licence if the applicant
13 does not comply with a requirement prescribed by regulation.
- 14 (5) If the CTP regulator proposes to issue a licence to a corporation, the
15 CTP regulator must, at least 14 days before the licence is issued, tell
16 all licensed insurers the name of the corporation.
- 17 (6) Failure by the CTP regulator to comply with subsection (5) does not
18 affect the validity of a corporation's licence.
- 19 *Note* Power given by a law to make a decision includes power to reverse or
20 change the decision. The power to reverse or change the decision is
21 exercisable in the same way, and subject to the same conditions, as the
22 power to make the decision (see Legislation Act, s 180).

23 **178 Licence conditions**

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

- 1 (b) the CTP premium guidelines;
- 2 *Note* The CTP premium guidelines are made under s 39.
- 3 (c) section 40 (Licensed insurer to apply for approval of
- 4 premiums);
- 5 (d) section 116 (Respondent to pay injured person's medical
- 6 expenses);
- 7 (e) section 121 (Respondent to make rehabilitation services
- 8 available);
- 9 (f) section 126 (Respondent to pay for rehabilitation services);
- 10 (g) the medical and rehabilitation guidelines;
- 11 *Note* The medical and rehabilitation guidelines are made under s 129.
- 12 (h) section 203 (Licensed insurer to have business plan);
- 13 (i) section 204 (Licensed insurer to comply with business plan);
- 14 (j) section 205 (Licensed insurer to revise business plan);
- 15 (k) the CTP guidelines;
- 16 *Note* The CTP guidelines are made under s 206.
- 17 (l) the business plan guidelines;
- 18 *Note* The business plan guidelines are made under s 206.
- 19 (m) section 209 (1) (Reinsurance arrangements of licensed
- 20 insurers);
- 21 (n) section 211 (Licensed insurer to provide investment details).
- 22 (2) A CTP insurer licence is also subject to any condition—
- 23 (a) prescribed by regulation; or

- 1 (b) decided by the CTP regulator.
- 2 *Note 1* Power given by a law to make a decision includes power to reverse or
3 change the decision. The power to reverse or change the decision is
4 exercisable in the same way, and subject to the same conditions, as the
5 power to make the decision (see Legislation Act, s 180).
- 6 *Note 2* If the CTP regulator is unable, under s 195 or s 196, to cancel a licence
7 because the CTP regulator is not satisfied the insurer's liabilities have
8 been appropriately dealt with, the CTP regulator may, instead, impose a
9 condition on the licence that prohibits the insurer from issuing any
10 further CTP policies (see s 197).
- 11 (3) A condition under subsection (2) (b) must not be inconsistent with
12 any condition prescribed by regulation that applies to the
13 CTP insurer licence.
- 14 (4) The CTP regulator may amend a CTP insurer licence by—
- 15 (a) including a condition on the licence; or
- 16 (b) amending or revoking a condition included by the
17 CTP regulator on the licence.
- 18 (5) If the CTP regulator amends a licensed insurer's licence under
19 subsection (4), the CTP regulator must tell the insurer about the
20 amendment as soon as practicable, but not later than 30 days after
21 the day the CTP regulator decides the amendment.
- 22 *Note* A decision by the CTP regulator under s (2) (b) or (4) is a reviewable
23 decision (see *Road Transport (General) Act 1999*, pt 7 and *Road*
24 *Transport (General) Regulation 2000*).
- 25 (6) This section is subject to section 180 (Prohibited licence
26 conditions).

- 1 **179 Matters that may be regulated by licence conditions**
- 2 (1) Without limiting section 178, the conditions to which a CTP insurer
3 licence may be subject include the following conditions:
- 4 (a) a condition for ensuring compliance with the obligations of the
5 licensed insurer;
- 6 (b) a condition for ensuring that insurance CTP premiums for
7 CTP policies are sufficient to meet motor accident claims;
- 8 (c) a condition for requiring the licensed insurer to achieve early
9 resolution of motor accident claims, and early payment for
10 treatment of injured people, at particular levels;
- 11 (d) a condition for ensuring general efficiency in relation to motor
12 accident claims and payments;
- 13 (e) a condition relating to the provision of information about
14 motor accident claims and profits.
- 15 (2) A licensed insurer is taken not to have contravened a condition
16 mentioned in subsection (1) (c) if the insurer establishes that—
- 17 (a) the insurer gave a report to the CTP regulator within a
18 reasonable period after the condition is contravened; and
- 19 (b) the report sets out reasonable grounds for justifying the
20 contravention.
- 21 (3) This section is subject to section 180.
- 22 **180 Prohibited licence conditions**
- 23 (1) A CTP insurer licence must not be subject to any of the following
24 conditions:
- 25 (a) a condition that gives, or is likely to give, a competitive
26 advantage to a licensed insurer over another licensed insurer;

1 (b) a condition that requires a licensed insurer to obtain a share of
2 the insurance market.

3 (2) A condition mentioned in subsection (1) has no effect on a
4 CTP licence.

5 **181 Offence—contravening licence condition**

6 (1) A person commits an offence if the person—

7 (a) is a licensed insurer; and

8 (b) contravenes a condition of the person's CTP insurer licence.

9 Maximum penalty: 100 penalty units.

10 (2) This section does not apply to a condition mentioned in section 180.

11 *Note 1* Penalties imposed under this Act must be paid into the nominal
12 defendant fund (see s 66).

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

- 14 • suspension of the CTP insurer licence (see s 187)
15 • a civil penalty to be imposed on the licensed insurer (see s 191)
16 • censure of the licensed insurer (see s 191).

17 However, if a licensed insurer is convicted of an offence under this
18 section, the CTP regulator must not require the licensed insurer to pay a
19 civil penalty under s 191.

20 **182 Contravention of licence condition does not affect**
21 **CTP policy**

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

1 **183** **Offence—unlicensed insurer contravening licence**
2 **condition**

3 A person commits an offence if—

- 4 (a) the person is not a licensed insurer; and
5 (b) the person engages in conduct that would, if the person was a
6 licensed insurer, contravene a condition of a CTP insurer
7 licence; and
8 (c) the condition relates to a motor accident.

9 Maximum penalty: 100 penalty units.

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

12 **184** **Licence—length**

13 A CTP insurer licence—

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

16 **185** **Transfer of licences**

17 (1) A licensed insurer (the *old insurer*) may, with the approval of the
18 CTP regulator, transfer the insurer's licence to—

- 19 (a) another licensed insurer (the *new insurer*); or
20 (b) a corporation to whom the CTP regulator proposes to issue a
21 licence (the *new insurer*).

22 (2) The CTP regulator must not approve the transfer of a licence unless
23 satisfied that the new insurer is able to meet the past, present and
24 future liabilities of the old insurer—

- 25 (a) under any CTP policy for which the old insurer is the insurer;
26 and

- 1 (b) to the nominal defendant fund; and
- 2 (c) to any other licensed insurer.

1 **Part 4.3** **Suspension of CTP insurer**
2 **licence**

3 **186** **Licence suspension notices**

4 The CTP regulator may suspend a CTP insurer licence under
5 section 187 or section 188 by giving the licensed insurer a written
6 suspension notice stating—

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

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

14 **187** **Grounds for licence suspension—contraventions**

15 (1) The CTP regulator may suspend a CTP insurer licence if the
16 CTP regulator believes on reasonable grounds that the insurer has
17 contravened—

- 18 (a) this Act; or
19 (b) the insurer's CTP insurer licence; or
20 (c) the insurance industry deed.

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

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

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

9 **188 Grounds for licence suspension—grounds other than**
10 **contraventions**

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

- 13 (a) the insurer is not authorised under the *Insurance Act 1973*
14 (Cwlth) to carry on insurance business; or
- 15 (b) any of the following is appointed over all or part of the assets,
16 or undertaking, of the insurer:
- 17 (i) a provisional liquidator, liquidator or official liquidator;
18 (ii) a receiver, receiver and manager or official manager;
19 (iii) a trustee; or
- 20 (c) the insurer is given a direction under the *Insurance Act 1973*
21 (Cwlth), section 51 (Inquiry by APRA and directions relating
22 to certain assets) or section 62 (Directions); or
- 23 (d) an inspector is appointed to investigate the affairs of the insurer
24 under the *Insurance Act 1973* (Cwlth), part V (Investigations);
25 or

- 1 (e) the CTP regulator receives a report under section 215 (Audit of
2 accounting records and compliance with guidelines) and
3 believes on reasonable grounds that the insurer is, or is likely
4 to become, unable to meet its liabilities under this Act or under
5 CTP policies issued by the insurer; or
- 6 (f) the insurer defaults in the payment of principal or interest of
7 more than \$100 000 under any debenture, or series of
8 debentures, issued by the insurer, unless the default occurs
9 because the insurer genuinely disputes its liability to make the
10 payment; or
- 11 (g) the insurer enters into, or resolves to enter into any of the
12 following, other than for a reconstruction or amalgamation on
13 terms that have been approved by the CTP regulator:
- 14 (i) an arrangement, composition or compromise with its
15 creditors;
- 16 (ii) a transfer for the benefit of its creditors; or
- 17 (h) a proceeding is commenced to sanction an arrangement,
18 composition, compromise or transfer mentioned in
19 paragraph (g), other than for a reconstruction or amalgamation
20 on terms that have been approved by the CTP regulator; or
- 21 (i) an application (other than a frivolous or vexatious application)
22 or order is made for the winding up or dissolution of the
23 insurer, other than for a reconstruction or amalgamation on
24 terms that have been approved by the CTP regulator; or
- 25 (j) a resolution is passed for the winding up or dissolution of the
26 insurer, other than for a reconstruction or amalgamation on
27 terms that have been approved by the CTP regulator; or
- 28 (k) there is a change in the effective control of the insurer; or
- 29 (l) the insurer becomes a subsidiary of a corporation of which it
30 was not a subsidiary when the licence was issued; or

- 1 (m) the CTP regulator believes on reasonable grounds that the
2 insurer has failed to comply with a condition imposed on the
3 insurer's authority to carry on insurance business under the
4 *Insurance Act 1973* (Cwlth); or
- 5 (n) a person claiming to be a creditor of the insurer gives the
6 insurer a demand requiring the insurer to pay an amount of
7 more than \$100 000, and the insurer fails to pay the amount, or
8 secure or compound for it to the satisfaction of the person,
9 within 3 weeks after the day the demand is given; or
- 10 (o) an execution or other process issued on a judgment, decree or
11 order of a court in favour of a creditor of the insurer is returned
12 unsatisfied, completely or partly, and the amount unsatisfied is
13 more than \$100,000; or
- 14 (p) the insurer agrees to the suspension.

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

18 *Note 2* A licensed insurer, or former licensed insurer, commits an offence if
19 any of the events or things mentioned in this section, other than
20 paragraph (e), paragraph (m) or paragraph (p), happens and the person
21 does not tell the CTP regulator about it (see s 225).

22 **189 Ending licence suspension**

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

1 **190 Offence—issuing CTP policy if licence suspended**

2 A person commits an offence if—

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

6 Maximum penalty: 100 penalty units

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

9 **191 Civil penalty or censure of licensed insurer**

10 (1) This section applies if the CTP regulator believes on reasonable
11 grounds that a licensed insurer has contravened—

- 12 (a) this Act; or
13 (b) the insurer's CTP insurer licence; or
14 (c) the insurance industry deed.

15 (2) The CTP regulator may, instead of suspending the insurer's
16 licence—

- 17 (a) impose a civil penalty on the insurer of not more than \$50 000;
18 or
19 (b) issue a letter of censure to the insurer.

20 *Note 1* Penalties imposed under this Act must be paid into the nominal
21 defendant fund (see s 66).

22 *Note 2* A decision to impose a civil penalty is a reviewable decision (see *Road*
23 *Transport (General) Act 1999*, pt 7 and *Road Transport (General)*
24 *Regulation 2000*).

- 1 (3) However, if a licensed insurer is convicted of an offence under
2 section 181 (Offence—contravening condition of CTP insurer
3 licence) in relation to an act or omission, the CTP regulator must not
4 require the licensed insurer to pay a civil penalty under this section
5 in relation to the same act or omission.
- 6 (4) Before imposing a civil penalty, the CTP regulator must—
- 7 (a) refer the matter to a committee (the *civil penalty and censure*
8 *committee*) for advice; and
- 9 (b) consider any advice provided by the civil penalty and censure
10 committee.
- 11 (5) The civil penalty and censure committee must give the licensed
12 insurer an opportunity to make written submissions about the
13 alleged contravention, but is not required to conduct a hearing into
14 the matter.

15 **192 Civil penalty and censure committee**

- 16 (1) The civil penalty and censure committee under section 191 consists
17 of—
- 18 (a) the CTP regulator; and
- 19 (b) a nominee of the Insurance Council of Australia Limited; and
- 20 (c) another member nominated jointly by the CTP regulator and
21 the Insurance Council of Australia Limited.
- 22 (2) If the Insurance Council of Australia Limited fails to make a
23 nomination for the civil penalty and censure committee within the
24 time required by the CTP regulator, the Minister may make the
25 nomination for the Insurance Council of Australia Limited.

1 **193 Recovery of civil penalty by CTP regulator**

2 (1) A civil penalty imposed under section 191 may be recovered by the
3 CTP regulator as a debt payable to the CTP regulator.

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

1 **Part 4.4** **Cancellation of CTP insurer**
2 **licences**

3 **194 Licence cancellation notices**

4 (1) The CTP regulator may cancel a licensed insurer's CTP insurer
5 licence under section 195 or section 196 by giving a written notice
6 to the insurer stating—

- 7 (a) that the licence is cancelled on the day stated in the notice; and
8 (b) the reasons for the cancellation.

9 (2) The day stated in the notice must not be a day earlier than the day
10 the licensed insurer receives the notice.

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

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

18 **195 Grounds for licence cancellation**

19 (1) The CTP regulator may cancel a licensed insurer's CTP insurer
20 licence for any reason the CTP regulator considers appropriate.

21 (2) Without limiting subsection (1), the CTP regulator may cancel a
22 licence for reasons relating to the motor accidents scheme under this
23 Act generally, whether or not the reasons relate to the efficiency and
24 conduct of the licensed insurer.

25 (3) Before cancelling a licensed insurer's CTP insurer licence, the
26 CTP regulator must give the licensed insurer an opportunity to make
27 written submissions about the reasons for the cancellation.

- 1 (4) This section is subject to section 197 (Insurer's liabilities to be met
2 before licence cancelled).

3 **196 Licence cancellation after surrender**

- 4 (1) If a licensed insurer surrenders the insurer's CTP insurer licence to
5 the CTP regulator, the CTP regulator may cancel the licence only if
6 the CTP regulator approves the surrender.

- 7 (2) This section is subject to section 197 (Insurer's liabilities to be met
8 before licence cancelled).

9 **197 Insurer's liabilities to be met before licence cancelled**

- 10 (1) The CTP regulator may cancel a CTP insurer licence under
11 section 195 or section 196 only if satisfied that the licensed insurer
12 has—

- 13 (a) discharged all of its past, present and future liabilities—

14 (i) under any CTP policy for which it is the insurer; and

15 (ii) to the nominal defendant fund; and

16 (iii) to any other licensed insurer; or

- 17 (b) provided security, or entered into other arrangements
18 satisfactory to the CTP regulator, for the liabilities.

- 19 (2) If the CTP regulator is unable, under subsection (1), to cancel a
20 licensed insurer's CTP insurer licence, the CTP regulator may,
21 instead, impose a condition on the licence that prohibits the insurer
22 from issuing any further CTP policies.

23 *Note* It is an offence to contravene a licence condition (see s 181).

1 **Part 4.5** **Transfer of CTP policies to other**
2 **insurers**

3 **198 Policy transfer notices**

4 The CTP regulator may transfer an insurer's CTP policies to another
5 insurer under section 199 by giving a written transfer notice to both
6 insurers stating—

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

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

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

16 **199 Transfer of policies to other insurers**

- 17 (1) The CTP regulator may transfer an insurer's CTP policies to a
18 licensed insurer if—

- 19 (a) the insurer's CTP insurer licence is cancelled or otherwise
20 ceases to be in force; or
21 (b) the CTP regulator is satisfied that it is necessary to do so to
22 ensure compliance with a condition of the licence.

- 23 (2) In this section:

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

- 1 **200 Effect of transfer of policies**
- 2 (1) If a CTP policy (the *original policy*) is transferred from an insurer
- 3 (the *old insurer*) to a licensed insurer (the *new insurer*) under
- 4 section 199—
- 5 (a) the original policy is cancelled; and
- 6 (b) the new insurer is taken to have issued a CTP policy—
- 7 (i) on the day of the transfer; and
- 8 (ii) on the same terms as the original policy; and
- 9 (iii) for the balance of the period of the original policy; and
- 10 (c) the old insurer must pay to the new insurer—
- 11 (i) the same proportion of the CTP premium paid, or to be
- 12 paid, for the original policy as the balance of the
- 13 indemnity period of the policy bears to the whole
- 14 indemnity period of the policy; and
- 15 (ii) an additional amount decided by the CTP regulator for the
- 16 income from investment and the management fee for the
- 17 CTP premium.
- 18 (2) The new insurer may recover an amount payable under
- 19 subsection (1) (c) as a debt from the old insurer.
- 20 (3) Cancellation of a CTP policy under this section ends the indemnity
- 21 period of the policy but, subject to this section, does not affect any
- 22 right, obligation or liability acquired, accrued or incurred under the
- 23 policy during the indemnity period.
- 24 **201 CTP insurer licence register**
- 25 (1) The CTP regulator must keep a register of—
- 26 (a) the name of each corporation that is—
- 27 (i) issued with a CTP insurer licence; or

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

1 **Part 4.6** **Supervision of licensed insurers**

2 **202** **What is a *business plan*?**

3 In this Act:

4 *business plan*, for a licensed insurer—

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

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

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

11 (i) motor accident claims handling;

12 (ii) management;

13 (iii) expenses;

14 (iv) systems for processing and transmitting information.

15 **203** **Licensed insurer to have business plan**

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

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

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

21 *Note* The CTP regulator may make business plan guidelines under s 206.

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

4 *Note* A CTP insurer licence is subject to the condition that the licensed
5 insurer must comply with this section (see s 178).

6 **204 Licensed insurer to comply with business plan**

- 7 (1) A licensed insurer must carry out the insurer's CTP insurance
8 business in accordance with the insurer's business plan.

- 9 (2) If a licensed insurer carries out the insurer's CTP insurance business
10 in a way that departs significantly from the business plan, the
11 insurer must tell the CTP regulator.

12 *Note* A CTP insurer licence is subject to the condition that the licensed
13 insurer must comply with this section (see s 178).

14 **205 Licensed insurer to revise business plan**

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

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

21 *Note* A CTP insurer licence is subject to the condition that the licensed
22 insurer must comply with this section (see s 178).

23 **206 CTP guidelines**

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

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

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

3 *Note* A CTP insurer licence is subject to the condition that the licensed
4 insurer must comply with the CTP guidelines (see s 178).

- 5 (3) The CTP guidelines may make provision for the following:

6 (a) issue of CTP policies;

7 (b) business plans (the *business plan guidelines*) for licensed
8 insurers.

- 9 (4) A CTP guideline is a disallowable instrument.

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

12 **207 What is a licensed insurer's *market share*?**

13 In this part:

14 *market share*, of a licensed insurer, means, at any particular time,
15 the proportion worked out under section 208 by the CTP regulator
16 for the insurer and applicable at the time.

17 **208 Working out market share of each licensed insurer**

18 (1) A licensed insurer must, not later than the due date for each quarter
19 and each financial year, tell the CTP regulator the amount of
20 insurance CTP premiums received by the insurer for all
21 CTP policies issued by the licensed insurer during the quarter or
22 year.

23 (2) The CTP regulator must, after notifications have been received from
24 all licensed insurers for a quarter or year, decide, for each licensed
25 insurer, the proportion that the CTP premiums received by the
26 licensed insurer for the quarter or year bears to the total amount of
27 CTP premiums received by all licensed insurers for the quarter or
28 year.

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

15 **209 Reinsurance arrangements of licensed insurers**

- 16 (1) A licensed insurer must tell the CTP regulator—
- 17 (a) details of arrangements made, or proposed to be made, for
18 reinsurance for liabilities under CTP policies issued by the
19 licensed insurer; and
- 20 (b) the terms of any approval of APRA under the *Insurance*
21 *Act 1973* (Cwlth) for the reinsurance.
- 22 *Note* A CTP insurer licence is subject to the condition that the licensed
23 insurer must comply with this s (see s 178).
- 24 (2) A licensed insurer must not, without the prior written agreement of
25 the CTP regulator, enter into any kind of reinsurance if the total
26 amount payable for the reinsurance exceeds 15% of the gross direct
27 CTP premium written by the insurer.

1 **210 What are *third-party funds*?**

2 In this part:

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

- 4 (a) the funds of the insurer derived from the payment of
5 CTP premiums for CTP policies; and
6 (b) from the investment of the funds.

7 **211 Licensed insurer to provide investment details**

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

12 *Note* A CTP insurer licence is subject to the condition that the licensed
13 insurer must comply with this section (see s 178).

14 **212 Offence—licensed insurer to keep accounts**

15 (1) A licensed insurer commits an offence if the insurer does not keep
16 the following accounting and other records for the business or
17 financial position of the insurer:

- 18 (a) the records prescribed by regulation;
19 (b) the records that the insurer is directed, in writing by the
20 CTP regulator, to keep.

21 Maximum penalty: 100 penalty units.

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

24 (2) In this section:

25 *accounting records* include the following:

- 26 (a) invoices;

- 1 (b) receipts;
2 (c) orders for the payment of amounts;
3 (d) bills of exchange;
4 (e) cheques;
5 (f) promissory notes;
6 (g) vouchers and other prime entry documents;
7 (h) the working papers and other documents that are necessary to
8 explain the methods and calculations by which accounts are
9 made up.

10 **213 Offence—licensed insurer to provide returns**

11 (1) A licensed insurer commits an offence if the licensed insurer does
12 not give the CTP regulator the following returns for the business or
13 financial position of the insurer:

- 14 (a) the returns prescribed by regulation;
15 (b) if the CTP regulator directs the insurer, in writing, to give a
16 return—the returns that the insurer is directed to give.

17 Maximum penalty: 100 penalty units.

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

20 (2) A licensed insurer commits an offence if the licensed insurer does
21 not give the returns mentioned in subsection (1) in the way—

- 22 (a) prescribed by regulation; or

- 1 (b) if the CTP regulator directs the insurer, in writing, to give the
2 returns in a stated way—that the CTP regulator directs.
- 3 Maximum penalty: 100 penalty units.
- 4 *Note* Penalties imposed under this Act must be paid into the nominal
5 defendant fund (see s 66).
- 6 (3) A licensed insurer commits an offence if the licensed insurer does
7 not include in the returns mentioned in subsection (1) the details—
- 8 (a) prescribed by regulation; and
- 9 (b) if the CTP regulator directs the insurer, in writing, to include
10 stated details—that the CTP regulator directs.
- 11 Maximum penalty: 100 penalty units.
- 12 *Note* Penalties imposed under this Act must be paid into the nominal
13 defendant fund (see s 66).
- 14 (4) A licensed insurer commits an offence if the licensed insurer, when
15 giving the returns mentioned in subsection (1), does not also give
16 the CTP regulator the documents—
- 17 (a) prescribed by regulation; or
- 18 (b) if the CTP regulator directs the insurer, in writing, to give
19 stated documents—that the CTP regulator directs.
- 20 Maximum penalty: 100 penalty units.
- 21 *Note* Penalties imposed under this Act must be paid into the nominal
22 defendant fund (see s 66).
- 23 (5) A licensed insurer commits an offence if the licensed insurer does
24 not give the returns mentioned in subsection (1) to the
25 CTP regulator—
- 26 (a) not later than 6 weeks after the end of each quarter; or

- 1 (b) if the CTP regulator directs, in writing, the licensed insurer to
2 give the returns at another stated time—not later than the stated
3 time.

4 Maximum penalty: 100 penalty units.

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

7 **214 CTP regulator may publish returns**

8 The CTP regulator may make publicly available a copy of any
9 return, and any document accompanying a return, given to the
10 CTP regulator under section 213.

11 **215 Audit of accounting records and compliance with
12 guidelines**

13 (1) The CTP regulator may appoint an appropriately qualified person
14 (an *appointed auditor*) to audit or inspect, and report to the
15 CTP regulator on—

- 16 (a) the accounting records of a licensed insurer; or
17 (b) other records relating to the business or financial position of a
18 licensed insurer; or
19 (c) the licensed insurer's compliance with each of the following:
20 (i) the CTP premium guidelines;
21 (ii) the medical and rehabilitation guidelines;
22 (iii) the business plan guidelines;
23 (iv) the CTP guidelines;
24 (v) any other guidelines made under this Act.

25 (2) An appointed auditor is, in exercising a function under this section,
26 entitled to inspect the accounting and other records of the licensed
27 insurer.

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- 1 (3) An appointed auditor exercising a function under this section has
2 qualified privilege in a proceeding for defamation for any statement
3 that the appointed auditor makes orally or in writing in the course of
4 exercising the function.
- 5 (4) In this section:
6 *accounting records*, of a licensed insurer, include the following:
7 (a) invoices;
8 (b) receipts;
9 (c) orders for the payment of amounts;
10 (d) bills of exchange;
11 (e) cheques;
12 (f) promissory notes;
13 (g) vouchers and other prime entry documents;
14 (h) records relating to how a licensed insurer's third-party funds
15 and other funds are invested;
16 (i) the working papers and other documents that are necessary to
17 explain the methods and calculations by which accounts are
18 made up.

19 **216 Offence—licensed insurer to assist appointed auditor**

20 A licensed insurer commits an offence if—

- 21 (a) an appointed auditor is exercising a function under section 215
22 in relation to the licensed insurer; and

- 1 (b) the licensed insurer does not provide all reasonable assistance
2 requested by the auditor to allow the exercise of the function.

3 Maximum penalty: 100 penalty units.

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

6 **217 Audit of licensed insurer's profitability**

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

12 **218 CTP regulator may ask for information etc**

- 13 (1) The CTP regulator may ask a licensed insurer to give the
14 CTP regulator stated information about the business and financial
15 position of—

16 (a) the licensed insurer; or

17 (b) a corporation that is a related body corporate of the licensed
18 insurer.

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

- 20 (2) The CTP regulator may ask a licensed insurer to give the
21 CTP regulator a stated document kept by—

22 (a) the licensed insurer; or

23 (b) a corporation that is a related body corporate of the licensed
24 insurer.

- 25 (3) The CTP regulator may ask a licensed insurer to make available for
26 inspection by the CTP regulator a stated document kept by—

27 (a) the licensed insurer; or

- 1 (b) a corporation that is a related body corporate of the licensed
2 insurer.
- 3 (4) To avoid any doubt, this section does not limit—
- 4 (a) any other provision of this Act about the CTP regulator
5 obtaining information; or
- 6 (b) how the CTP regulator may obtain information.
- 7 (5) In this section:
- 8 **document** includes—
- 9 (a) a return or account given under—
- 10 (i) the Corporations Act; and
- 11 (ii) the *Insurance Act 1973* (Cwlth); and
- 12 (b) a copy of, or extract from, a document.
- 13 **information**, about the business and financial position of an entity,
14 includes—
- 15 (a) financial information that is, or may be, relevant to the
16 consideration by the CTP regulator of CTP premiums charged
17 by the licensed insurer under this Act; and
- 18 (b) information about—
- 19 (i) the cost of motor accident claims handling incurred by the
20 licensed insurer; and
- 21 (ii) the settlement of motor accident claims by the licensed
22 insurer; and
- 23 (c) information about any other matter in relation to the licensed
24 insurer.
- 25 **licensed insurer** includes a former licensed insurer.

- 1 **219** **How CTP regulator is to ask**
- 2 (1) A request by the CTP regulator under section 218 must—
- 3 (a) be made in writing and given to the licensed insurer or former
- 4 licensed insurer; and
- 5 (b) state how the request must be complied with; and
- 6 (c) state when the request must be complied with.
- 7 (2) A statement of how the request must be complied with may include
- 8 a requirement that the licensed insurer, or former licensed insurer,
- 9 give the CTP regulator a certificate of correctness.
- 10 (3) In this section:
- 11 *certificate of correctness*, for stated information or a stated
- 12 document (or a copy of or extract from a stated document), means a
- 13 certificate certifying the correctness of the information, document,
- 14 copy or extract by any of the following:
- 15 (a) a registered tax agent;
- 16 (b) a registered company auditor;
- 17 (c) an actuary approved by the CTP regulator.
- 18 *registered company auditor*—see the Corporations Act, section 9.
- 19 **220** **Offence—insurer to give information and documents**
- 20 (1) A licensed insurer commits an offence if—
- 21 (a) the CTP regulator makes a request of a licensed insurer, or a
- 22 former licensed insurer, under section 218; and
- 23 (b) the CTP regulator makes the request in the way mentioned in
- 24 section 219; and

1 (c) the insurer does not comply with the request.

2 Maximum penalty: 100 penalty units.

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

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

8 **221 Reports about insurers**

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

10 (a) the level of compliance by insurers with—

11 (i) the requirements of this Act; and

12 (ii) any conditions of licences under this Act (including any
13 guidelines under this Act); and

14 (b) complaints made about insurers that relate to any matter to
15 which this Act relates; and

16 (c) anything else about insurers that relates to any matter to which
17 this Act relates.

18 (2) A report may relate to—

19 (a) insurers generally; or

20 (b) a class of insurers; or

21 (c) a particular insurer.

22 (3) A report may identify a particular insurer.

23 (4) A report may include the observations and recommendations the
24 CTP regulator considers appropriate.

25 (5) The Minister may make a report public.

- 1 **222** **CTP regulator may apply for policy holder protection**
2 **order**
- 3 (1) The CTP regulator may apply to the Supreme Court for an order (a
4 *policy holder protection order*) to protect the interests of the holders
5 of CTP policies issued by a licensed insurer or a former licensed
6 insurer.
- 7 (2) If the CTP regulator intends to apply for a policy holder protection
8 order, the CTP regulator must give the following entities notice of
9 its intention:
- 10 (a) APRA;
11 (b) ASIC.
- 12 (3) Each of the following entities has a right to appear, and be heard, in
13 a proceeding for a policy holder protection order:
- 14 (a) APRA;
15 (b) ASIC.
- 16 (4) Before considering an application for a policy holder protection
17 order, the Supreme Court may, if in its opinion it is desirable to do
18 so, make an interim policy holder protection order that is expressed
19 to have effect until the application is decided.
- 20 (5) If the Supreme Court makes an interim policy holder protection
21 order, the court may not require the CTP regulator to give an
22 undertaking as to damages as a condition of making the order.

23 **223** **Court orders to protect policy holders**

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

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

- 1 (2) However, the court may make an order for a licensed insurer only
2 if—
- 3 (a) satisfied that the licensed insurer—
- 4 (i) is not, or may not be, able to meet the insurer’s liabilities
5 under the CTP policies; or
- 6 (ii) has acted, or may act, in a way that is prejudicial to the
7 interests of the holders of the CTP policies; and
- 8 (b) the licensed insurer is not a corporation that is in the course of
9 being wound up.
- 10 (3) Without limiting subsection (1), the Court may make the following
11 orders:
- 12 (a) an order regulating the administration and payment of motor
13 accident claims under the CTP policies;
- 14 (b) an order prohibiting or regulating the transfer or disposal of, or
15 other dealing in, the assets of the licensed insurer;
- 16 (c) an order requiring the licensed insurer to discharge its
17 liabilities under the CTP policies out of its assets and the assets
18 of any related body corporate;
- 19 (d) an order appointing a receiver or receiver and manager, having
20 the powers that the Court orders, of the property or part of the
21 property of the licensed insurer or of any related body
22 corporate.
- 23 (4) If the Supreme Court makes an order under this section, the court
24 may, on application by the CTP regulator or anyone else affected by
25 the order, make another order revoking or amending the order.
- 26 (5) To avoid any doubt, the powers of the Supreme Court under this
27 section are in addition to any other powers of the Supreme Court.

1 (6) In this section:

2 *licensed insurer* includes a former licensed insurer.

3 **224 Offence—contravene court order**

4 A person commits an offence if—

5 (a) a court order under section 223 is in force for the person; and

6 (b) the person contravenes the order.

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

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

11 **225 Offence—insurer to tell CTP regulator about grounds for
12 suspension**

13 A person commits an offence if—

14 (a) the person is a licensed insurer or a former licensed insurer;
15 and

16 (b) an event or thing mentioned in section 188 (Grounds for
17 suspension—other grounds) happens, other than an event or
18 thing mentioned in section 188 (e), (m) or (p); and

19 (c) the person does not tell the CTP regulator about the event or
20 thing, in writing, within 21 days after the event or thing
21 happens.

22 Maximum penalty: 100 penalty units.

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

1 **226** **Offence—insurer to tell CTP regulator of decrease in**
2 **issued capital**

3 A person commits an offence if—

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

10 Maximum penalty: 100 penalty units.

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

13 **227** **Offence—insurer to tell CTP regulator of bidder’s**
14 **statement or target’s statement**

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

20 Maximum penalty: 100 penalty units.

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

23 (2) In this section:

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

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

1 **228** **Only CTP regulator may issue proceeding against**
2 **licensed insurer**

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

1 **Part 4.7** **Insolvent insurers**

2 **229** **Definitions—pt 4.7**

3 In this part:

4 ***CTP policy issued by an insolvent insurer*** means—

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

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

15 ***insolvent insurer declaration***—see section 231.

16 ***liquidator*** includes a provisional liquidator.

17 **230** **Liquidators**

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

1 **231 Insolvent insurer declarations**

2 (1) The Minister may declare (an *insolvent insurer declaration*) a
3 licensed insurer, or former licensed insurer, to be an insolvent
4 insurer if—

5 (a) the Minister is satisfied that—

6 (i) a liquidator or provisional liquidator has been appointed
7 for the licensed insurer or former licensed insurer; or

8 (ii) the licensed insurer, or former licensed insurer, has been
9 dissolved; and

10 (b) the Minister has consulted—

11 (i) APRA; and

12 (ii) ASIC; and

13 (c) the Treasurer approves the making of the declaration.

14 (2) An insolvent insurer declaration is a notifiable instrument.

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

16 **232 Nominal defendant is insurer if CTP insurer insolvent**

17 (1) If a CTP insurer for a CTP policy becomes an insolvent insurer, the
18 nominal defendant becomes the insurer for the policy.

19 (2) However, subsection (1) does not apply to a CTP policy that is
20 transferred to a licensed insurer (other than an insolvent insurer).

21 *Note* Transfer of CTP policies is dealt with in pt 4.5.

- 1 **233 Nominal defendant may recover from insolvent insurer**
- 2 (1) If a CTP insurer becomes an insolvent insurer, any costs reasonably
- 3 incurred by the nominal defendant for motor accident claims under a
- 4 CTP policy for which the insolvent insurer was the insurer become
- 5 debts of the insolvent insurer to the nominal defendant and provable
- 6 in the insolvency.
- 7 (2) The costs that become the debts of the insolvent insurer under
- 8 subsection (1) have the same order of priority in the winding-up of
- 9 the insolvent insurer as they would if the nominal defendant were
- 10 the CTP insured person under the CTP policy.
- 11 (3) If the motor accident claim for which costs were incurred by the
- 12 nominal defendant is covered by a contract of reinsurance, the
- 13 nominal defendant succeeds to the rights of the insolvent insurer
- 14 under the contract of reinsurance.
- 15 *Note* An amount recovered under this section must be paid into the nominal
- 16 defendant fund (see s 66).
- 17 **234 Offence—liquidator to give motor accident claims to**
- 18 **nominal defendant**
- 19 The liquidator of an insolvent insurer commits an offence if the
- 20 liquidator—
- 21 (a) receives a motor accident claim about a CTP policy issued by
- 22 the insolvent insurer; and
- 23 (b) does not give the motor accident claim to the nominal
- 24 defendant.
- 25 Maximum penalty: 20 penalty units.
- 26 *Note* Penalties imposed under this Act must be paid into the nominal
- 27 defendant fund (see s 66).

1 **235** **Offence—liquidator to give information etc to nominal**
2 **defendant**

- 3 (1) The liquidator of an insolvent insurer commits an offence if—
- 4 (a) the nominal defendant asks the liquidator in writing to give the
- 5 nominal defendant all documents, or information, in the
- 6 liquidator’s possession relating to CTP policies issued by the
- 7 insolvent insurer, or motor accident claims, or judgments,
- 8 made in relation to the CTP policies; and
- 9 (b) the liquidator does not give the documents or information to
- 10 the nominal defendant within 45 days after the day the nominal
- 11 defendant asks for them.

12 Maximum penalty: 20 penalty units.

13 *Note* Penalties imposed under this Act must be paid into the nominal

14 defendant fund (see s 66).

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

- 1 **236 Offence—liquidator to allow inspection of documents**
- 2 (1) The liquidator of an insolvent insurer commits an offence if—
- 3 (a) a person authorised by the Minister asks the liquidator to make
- 4 available for inspection by the person all documents in the
- 5 liquidator’s possession relating to—
- 6 (i) CTP policies issued by the insolvent insurer; or
- 7 (ii) motor accident claims or judgments made in relation to
- 8 the CTP policies; and
- 9 (b) the liquidator does not make the documents available to the
- 10 person within 45 days after the day the person asks for them.
- 11 Maximum penalty: 20 penalty units.
- 12 *Note* Penalties imposed under this Act must be paid into the nominal
- 13 defendant fund (see s 66).
- 14 (2) Subsection (1) does not apply to a liquidator if—
- 15 (a) before the end of the 45-day period, the liquidator—
- 16 (i) in writing, tells the person authorised that it is not
- 17 reasonably practicable to give the person the documents
- 18 within the period; and
- 19 (ii) explains why it is not reasonably practicable; and
- 20 (b) the person extends the time for providing the documents; and
- 21 (c) the liquidator makes the documents available to the person
- 22 within the extended time.
- 23 (3) A regulation may prescribe other circumstances when subsection (1)
- 24 does not apply to a liquidator.

1 **237 Borrowing for nominal defendant fund**

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

7 **238 Nominal defendant may intervene in legal proceeding**

- 8 (1) This section applies if—
- 9 (a) the liquidator of an insolvent insurer applies to a court for
10 directions for a matter arising under the winding-up; or
- 11 (b) the exercise, by the liquidator of an insolvent insurer, of any of
12 the liquidator's functions, whether under this part or not, is
13 challenged, reviewed or called into question in a proceeding
14 before a court; or
- 15 (c) another matter that may affect the operation of this part is
16 raised in a proceeding before a court.
- 17 (2) The nominal defendant may intervene at any stage of the
18 proceeding.
- 19 (3) If the nominal defendant intervenes, the nominal defendant becomes
20 a party to the proceeding and has all the rights of a party to the
21 proceeding including the right to appeal against any order, judgment
22 or direction of the court.
- 23 (4) The nominal defendant is entitled to be paid, out of the nominal
24 defendant fund, all the costs and expenses incurred by the nominal
25 defendant in exercising a function under this section.

- 1 **239 Nominal defendant may take legal proceeding**
- 2 (1) This section applies to a proceeding if—
- 3 (a) the nominal defendant may take the proceeding for a person
- 4 who is entitled (or who would be entitled but for the
- 5 dissolution of the insolvent insurer), under a CTP policy issued
- 6 by an insolvent insurer, to be indemnified against a motor
- 7 accident claim or judgment arising from or relating to the
- 8 CTP policy; and
- 9 (b) the proceeding is for, or for enforcing or securing compliance
- 10 with, any provision under this part or another Act.
- 11 (2) The nominal defendant is taken to represent sufficiently the interests
- 12 of the public and may take the proceeding in its own name.
- 13 (3) The nominal defendant is entitled to be paid, out of the nominal
- 14 defendant fund, all the costs and expenses incurred by the nominal
- 15 defendant in exercising the nominal defendant’s functions under this
- 16 section.

1 **Chapter 5 Enforcement**

2 **Part 5.1 Enforcement—general**

3 **240 Definitions—ch 5**

4 In this chapter:

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

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

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

12 *occupier*, of premises, includes—

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

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

1 **242 Production of identity card**

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

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

7 **243 Consent to entry**

8 (1) When seeking the consent of an occupier of premises to enter
9 premises under section 241 (1) (b), an authorised person must—

10 (a) produce his or her identity card; and

11 (b) tell the occupier—

12 (i) the purpose of the entry; and

13 (ii) that anything found and seized under this chapter may be
14 used in evidence in court; and

15 (iii) that consent may be refused.

16 (2) If the occupier consents, the authorised person must ask the occupier
17 to sign a written acknowledgment (an *acknowledgement of*
18 *consent*)—

19 (a) that the occupier was told—

20 (i) the purpose of the entry; and

21 (ii) that anything found and seized under this chapter may be
22 used in evidence in court; and

23 (iii) that consent may be refused; and

24 (b) that the occupier consented to the entry; and

25 (c) stating the time and date when consent was given.

- 1 (3) If the occupier signs an acknowledgment of consent, the authorised
2 person must immediately give a copy to the occupier.
- 3 (4) A court must find that the occupier did not consent to entry to the
4 premises by the authorised person under this chapter if—
- 5 (a) the question arises in a proceeding in the court whether the
6 occupier consented to the entry; and
- 7 (b) an acknowledgment of consent is not produced in evidence;
8 and
- 9 (c) it is not proved that the occupier consented to the entry.

10 **244 General powers on entry to premises**

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

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

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

25 **Maximum penalty: 50 penalty units.**

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

- 1 **245 Power to seize things**
- 2 (1) An authorised person who enters premises under this chapter with
- 3 the occupier’s consent may seize anything at the premises if—
- 4 (a) the authorised person is satisfied on reasonable grounds that
- 5 the thing is connected with an offence against this Act; and
- 6 (b) seizure of the thing is consistent with the purpose of the entry
- 7 told to the occupier when seeking the occupier’s consent.
- 8 (2) An authorised person who enters premises under a warrant under
- 9 this chapter may seize anything at the premises that the authorised
- 10 person is authorised to seize under the warrant.
- 11 (3) An authorised person who enters premises under this chapter
- 12 (whether with the occupier’s consent, under a warrant or otherwise)
- 13 may seize anything at the premises if satisfied on reasonable
- 14 grounds that—
- 15 (a) the thing is connected with an offence against this Act; and
- 16 (b) the seizure is necessary to prevent the thing from being—
- 17 (i) concealed, lost or destroyed; or
- 18 (ii) used to commit, continue or repeat the offence.
- 19 (4) The powers of an authorised person under subsection (3) are
- 20 additional to any powers of the authorised person under
- 21 subsection (1) or subsection (2) or any other territory law.
- 22 (5) Having seized a thing, an authorised person may remove the thing
- 23 from the premises where it was seized (the *place of seizure*) to
- 24 another place.

1 **Part 5.3** **Search warrants**

2 **246** **Warrants generally**

- 3 (1) An authorised person may apply to a magistrate for a warrant to
4 enter premises.
- 5 (2) The application must be sworn and state the grounds on which the
6 warrant is sought.
- 7 (3) The magistrate may refuse to consider the application until the
8 authorised person gives the magistrate all the information the
9 magistrate requires about the application in the way the magistrate
10 requires.
- 11 (4) The magistrate may issue a warrant only if satisfied there are
12 reasonable grounds for suspecting—
- 13 (a) there is a particular thing or activity connected with an offence
14 against this Act; and
- 15 (b) the thing or activity—
- 16 (i) is, or is being engaged in, at the premises; or
- 17 (ii) may be, or may be engaged in, at the premises within the
18 next 7 days.
- 19 (5) The warrant must state—
- 20 (a) that an authorised person may, with any necessary assistance
21 and force, enter the premises and exercise the authorised
22 person's powers under this chapter; and
- 23 (b) the offence for which the warrant is issued; and
- 24 (c) the things that may be seized under the warrant; and
- 25 (d) the hours when the premises may be entered; and

- 1 (e) the date, within 7 days after the day of the warrant's issue, the
2 warrant ends.

3 **247 Warrants—application made other than in person**

- 4 (1) An authorised person may apply for a warrant by phone, fax, radio
5 or other form of communication if the authorised person considers it
6 necessary because of—
- 7 (a) urgent circumstances; or
8 (b) other special circumstances.
- 9 (2) Before applying for the warrant, the authorised person must prepare
10 an application stating the grounds on which the warrant is sought.
- 11 (3) The authorised person may apply for the warrant before the
12 application is sworn.
- 13 (4) After issuing the warrant, the magistrate must immediately fax a
14 copy to the authorised person if it is practicable to do so.
- 15 (5) If it is not practicable to fax a copy to the authorised person—
- 16 (a) the magistrate must tell the authorised person—
- 17 (i) the terms of the warrant; and
18 (ii) the date and time the warrant was issued; and
- 19 (b) the authorised person must complete a form of warrant (the
20 *warrant form*) and write on it—
- 21 (i) the magistrate's name; and
22 (ii) the date and time the magistrate issued the warrant; and
23 (iii) the warrant's terms.
- 24 (6) The faxed copy of the warrant, or the warrant form properly
25 completed by the authorised person, authorises the entry and the
26 exercise of the authorised person's powers under this chapter.

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- 1 (7) The authorised person must, at the first reasonable opportunity, send
2 to the magistrate—
- 3 (a) the sworn application; and
- 4 (b) if the authorised person completed a warrant form—the
5 completed warrant form.
- 6 (8) On receiving the documents, the magistrate must attach them to the
7 warrant.
- 8 (9) A court must find that a power exercised by the authorised person
9 was not authorised by a warrant under this section if—
- 10 (a) the question arises in a proceeding in the court whether the
11 exercise of power was authorised by a warrant; and
- 12 (b) the warrant is not produced in evidence; and
- 13 (c) it is not proved that the exercise of power was authorised by a
14 warrant under this section.

15 **248 Search warrants—announcement before entry**

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

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

7 **249 Details of search warrant to be given to occupier etc**

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

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

14 **250 Occupier entitled to be present during search etc**

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

1 **Part 5.4** **Return and forfeiture of things**
2 **seized**

3 **251** **Receipt for things seized**

- 4 (1) As soon as practicable after an authorised person seizes a thing
5 under this chapter, the authorised person must give a receipt for it to
6 the person from whom it was seized.
- 7 (2) If, for any reason, it is not practicable to comply with subsection (1),
8 the authorised person must leave the receipt, secured conspicuously,
9 at the place of seizure under section 245 (Power to seize things).
- 10 (3) A receipt under this section must include the following:
- 11 (a) a description of the thing seized;
- 12 (b) an explanation of why the thing was seized;
- 13 (c) the authorised person's name, and how to contact the
14 authorised person;
- 15 (d) if the thing is moved from the premises where it is seized—
16 where the thing is to be taken.

17 **252** **Moving things to another place for examination or**
18 **processing under search warrant**

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

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

24 **253 Access to things seized**

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

- 27 (a) inspect it; and
- 28 (b) if it is a document—take extracts from it or make copies of it.

- 1 **254 Return of things seized**
- 2 A thing seized under this chapter must be returned to its owner, or
- 3 reasonable compensation must be paid by the Territory to the owner
- 4 for the loss of the thing, if—
- 5 (a) an infringement notice for an offence relating to the thing is
- 6 not served on the owner within 1 year after the day of the
- 7 seizure and—
- 8 (i) a prosecution for an offence relating to the thing is not
- 9 started within the 1-year period; or
- 10 (ii) a prosecution for an offence relating to the thing is started
- 11 within the 1-year period but the court does not find the
- 12 offence proved; or
- 13 (b) an infringement notice for an offence relating to the thing is
- 14 served on the owner within 1 year after the day of the seizure,
- 15 the infringement notice is withdrawn and—
- 16 (i) a prosecution for an offence relating to the thing is not
- 17 started within the 1-year period; or
- 18 (ii) a prosecution for an offence relating to the thing is started
- 19 within the 1-year period but the court does not find the
- 20 offence proved; or
- 21 (c) an infringement notice for an offence relating to the thing is
- 22 served on the owner and not withdrawn within 1 year after the
- 23 day of the seizure, liability for the offence is disputed in
- 24 accordance with the *Magistrates Court Act 1930*, section 132
- 25 (Disputing liability for infringement notice offence) and—
- 26 (i) an information is not laid in the Magistrates Court against
- 27 the person for the offence within 60 days after the day
- 28 notice is given under section 132 that liability is disputed;
- 29 or

- 1 (ii) an information is laid in the Magistrates Court against the
2 person for the offence within the 60-day period, but the
3 Magistrates Court does not find the offence proved; or
- 4 (d) before the thing is forfeited to the Territory under section 255,
5 the chief executive—
- 6 (i) becomes satisfied that there has been no offence against
7 this Act with which the thing was connected; or
- 8 (ii) decides not to prosecute or serve an infringement notice
9 for the offence.

10 **255 Forfeiture of seized things**

- 11 (1) This section applies if—
- 12 (a) anything seized under this chapter has not been returned under
13 section 254; and
- 14 (b) an application for disallowance of the seizure under
15 section 256—
- 16 (i) has not been made within 10 days after the day of the
17 seizure; or
- 18 (ii) has been made within the 10-day period, but the
19 application has been refused or withdrawn before a
20 decision in relation to the application had been made.
- 21 (2) If this section applies to the seized thing—
- 22 (a) it is forfeited to the Territory; and
- 23 (b) it may be sold, destroyed or otherwise disposed of as the chief
24 executive directs.

1 **256 Application for order disallowing seizure**

- 2 (1) A person claiming to be entitled to anything seized under this
3 chapter may apply to the Magistrates Court within 10 days after the
4 day of the seizure for an order disallowing the seizure.
- 5 (2) The application may be heard only if the applicant has served a copy
6 of the application on the chief executive.
- 7 (3) The chief executive is entitled to appear as respondent at the hearing
8 of the application.

9 **257 Order for return of seized thing**

- 10 (1) This section applies if a person claiming to be entitled to anything
11 seized under this chapter applies to the Magistrates Court under
12 section 256 for an order disallowing the seizure.
- 13 (2) The Magistrates Court must make an order disallowing the seizure if
14 satisfied that—
- 15 (a) the applicant would, apart from the seizure, be entitled to the
16 return of the seized thing; and
- 17 (b) the thing is not connected with an offence against this Act; and
- 18 (c) possession of the thing by the person would not be an offence.
- 19 (3) The Magistrates Court may also make an order disallowing the
20 seizure if satisfied there are exceptional circumstances justifying the
21 making of the order.
- 22 (4) If the Magistrates Court makes an order disallowing the seizure, the
23 court may make 1 or more of the following ancillary orders:
- 24 (a) an order directing the chief executive to return the thing to the
25 applicant or to someone else who appears to be entitled to it;
- 26 (b) if the thing cannot be returned or has depreciated in value
27 because of the seizure—an order directing the Territory to pay
28 reasonable compensation;

- 1 (c) an order about the payment of costs in relation to the
2 application.

1 **Part 5.5** **Enforcement—miscellaneous**

2 **258** **Damage etc to be minimised**

- 3 (1) In the exercise, or purported exercise, of a function under this
4 chapter, an authorised person must take all reasonable steps to
5 ensure that the authorised person, and any person assisting the
6 authorised person, causes as little inconvenience, detriment and
7 damage as practicable.
- 8 (2) If an authorised person, or a person assisting an authorised person,
9 damages anything in the exercise or purported exercise of a function
10 under this chapter, the authorised person must give written notice of
11 the particulars of the damage to the person the authorised person
12 believes on reasonable grounds is the owner of the thing.
- 13 (3) If the damage happens at premises entered under this chapter in the
14 absence of the occupier, the notice may be given by leaving it,
15 secured conspicuously, at the premises.

16 **259** **Compensation for exercise of enforcement powers**

- 17 (1) A person may claim compensation from the Territory if the person
18 suffers loss or expense because of the exercise, or purported
19 exercise, of a function under this chapter by an authorised person or
20 a person assisting an authorised person.
- 21 (2) Compensation may be claimed and ordered in a proceeding for—
22 (a) compensation; or
23 (b) an offence against this Act brought against the person making
24 the claim for compensation.
- 25 (3) A court may order the payment of reasonable compensation for the
26 loss or expense only if satisfied that it is just to make the order in the
27 circumstances of the particular case.

- 1 (4) A regulation may prescribe matters that may, must or must not be
2 taken into account by the court in considering whether it is just to
3 make the order.

1 **Chapter 6** **Information collection and**
2 **secrecy**

3 **260** **Information to be provided by licensed insurers**

- 4 (1) A licensed insurer must give the CTP regulator—
- 5 (a) periodic returns, as prescribed by regulation, containing the
6 information prescribed by regulation; and
- 7 (b) information about claims against the insurer that is prescribed
8 by regulation, or that the CTP regulator requires by written
9 notice to the insurer; and
- 10 (c) other information that is relevant to the administration of this
11 Act that is prescribed by regulation, or that the CTP regulator
12 requires by written notice to the insurer.

13 **Example**

14 An insurer may be required to provide—

- 15 (a) details of motor vehicle accident claims against the insurer, and the dates
16 when notice of the claims were received by the insurer; and
- 17 (b) information about the claimants; and
- 18 (c) information about whether liability was admitted by the insurer, when
19 liability was admitted or denied and, if liability was admitted, the extent to
20 which liability was admitted; and
- 21 (d) information about the rehabilitation services made available to the claimant
22 and the extent to which the rehabilitation services were used by the claimant;
23 and
- 24 (e) information about the costs of the insurer on claims, and how the costs are
25 made up.

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

1 (2) The information must be provided by means of systems for the
2 processing and transmission of information that the CTP regulator
3 requires by written notice to the insurer.

4 *Note* If a form is approved under s 266 for the provision of information under
5 this section, the form must be used.

6 (3) A person commits an offence if the person—

7 (a) is a licensed insurer; and

8 (b) must give the CTP regulator a periodic return or information
9 under this section; and

10 (c) does not give the periodic return or information as required
11 under this section.

12 Maximum penalty: 150 penalty units.

13 (4) If a court convicts a licensed insurer of an offence against this
14 section, the court may, by order, cancel the insurer's licence.

15 **261 CTP claims register**

16 (1) The CTP regulator must keep a register of compulsory third-party
17 insurance motor accident claims (the *CTP claims register*).

18 (2) The CTP claims register must contain information provided under
19 this Act by insurers that the CTP regulator considers appropriate for
20 inclusion in the CTP claims register.

21 (3) The information contained in the CTP claims register must be
22 accessible to licensed insurers and others to the extent that the
23 CTP regulator decides.

24 (4) However, information that would, if it became generally known,
25 affect an insurer's competitive position must not be disclosed in a
26 form that would allow the insurer to be identified.

- 1 **262 Secrecy**
- 2 (1) In this section:
- 3 *court* includes a tribunal, authority or person having power to
4 require the production of documents or the answering of questions.
- 5 *divulge* includes communicate.
- 6 *person to whom this section applies* means a person who—
- 7 (a) is or has been—
- 8 (i) a member of the CTP premium board; or
- 9 (ii) a licensed insurer; or
- 10 (iii) an actuary engaged by the CTP regulator for this Act; or
- 11 (b) exercises, or has exercised, a function under this Act.
- 12 *produce* includes allow access to.
- 13 *protected information* means information about a person that is
14 disclosed to, or obtained by, a person to whom this section applies
15 because of the exercise of a function under this Act by the person or
16 someone else.
- 17 (2) A person to whom this section applies commits an offence if—
- 18 (a) the person—
- 19 (i) makes a record of protected information about someone
20 else; and
- 21 (ii) is reckless about whether the information is protected
22 information about someone else; or
- 23 (b) the person—
- 24 (i) does something that divulges protected information about
25 someone else; and

- 1 (ii) is reckless about whether—
- 2 (A) the information is protected information about
- 3 someone else; and
- 4 (B) doing the thing would result in the information being
- 5 divulged to someone else.
- 6 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 7 both.
- 8 (3) Subsection (2) does not apply if the record is made, or the
- 9 information is divulged—
- 10 (a) under this Act or another territory law; or
- 11 (b) in relation to the exercise of a function, as a person to whom
- 12 this section applies, under this Act or another territory law; or
- 13 (c) under the insurance industry deed; or
- 14 (d) in a court proceeding.
- 15 (4) Subsection (2) does not apply to the divulging of protected
- 16 information about someone with the person's consent.
- 17 (5) Subsection (2) does not apply to the divulging of protected
- 18 information by an insurer only to another insurer.

1 Chapter 7 Miscellaneous

2 263 Application to Territory and Commonwealth motor 3 vehicles

4 (1) A requirement under this Act for a CTP policy does not apply in
5 relation to a motor vehicle owned by the Territory, the
6 Commonwealth or a territory or commonwealth authority.

7 (2) However, the Territory, the Commonwealth or a territory or
8 commonwealth authority is, for a motor vehicle for which a
9 CTP policy is not in force, under the same liabilities, and has the
10 same rights, as a licensed insurer would be under, or have, if the
11 insurer had issued a CTP policy for the vehicle.

12 (3) In this section:

13 *commonwealth authority* means a body, whether or not
14 incorporated, established under a Commonwealth Act.

15 264 CTP regulator

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

18 (2) The chief executive is the CTP regulator.

19 (3) Anything done in the name of, or for, the CTP regulator by the chief
20 executive in exercising a function of the CTP regulator is taken to
21 have been done for, and binds, the Territory.

22 265 Delegation of CTP regulator's functions

23 The CTP regulator may delegate the CTP regulator's functions
24 under the road transport legislation to a public employee.

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

266 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.

267 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 following:

- (a) third-party insurance in relation to trader's plates;
- (b) third-party insurance in relation to unregistered vehicle permits;
- (c) 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 66).

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).

- (4) In this section:

trader's plate—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

1 *unregistered vehicle permit*—see the *Road Transport (Vehicle*
2 *Registration) Act 1999*, dictionary.

3 **268 Legislation amended—sch 1**

4 This Act amends the legislation mentioned in schedule 1.

5 **269 Legislation repealed**

6 The *Road Transport (Third-party Insurance) Regulation 2000*
7 (SL2000-6) is repealed.

Chapter 8 Transitional

270 Definitions—ch 8

In this chapter:

commencement day means the day this Act, section 5 commences.

former CTP provisions means the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance).

former nominal defendant means the nominal defendant under the former CTP provisions.

third-party policy means an insurance policy issued under the former CTP provisions.

271 Transitional—personal injury claims

- (1) This section applies to a third-party policy 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) 15 days after the day the registration period to which the policy relates ends.
- (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 this Act had not been enacted.

- 1 (4) To remove any doubt, if personal injury arises out of a motor
2 vehicle accident that happens on or after the commencement day, a
3 claim for the personal injury must be dealt with under this Act, even
4 if the accident happens while a third-party policy under the former
5 CTP provisions is in force in relation to the risk.

6 **272 Transitional—nominal defendant**

- 7 The nominal defendant succeeds to the rights and liabilities of the
8 former nominal defendant for personal injury arising out of a motor
9 vehicle accident that happened before the commencement day.

10 **273 Transitional—premiums**

- 11 (1) This section applies if—
12 (a) on the commencement day, there is no CTP premium; and
13 (b) before a CTP premium is approved, a licensed insurer issues a
14 CTP policy.

15 *Note* **CTP premium** means a premium approved under pt 2.6 (see s 37).

- 16 (2) The *Road Transport (General) Act 1999*, section 214 (as in force
17 immediately before the commencement day) applies in relation to
18 the CTP premium as if this Act had not been enacted.

19 **274 Transitional—authorised insurers**

- 20 (1) Each authorised insurer is, on the commencement day, taken to be a
21 licensed insurer.
22 (2) The authorised insurer's licence expires when its authorisation
23 would have expired if this Act had not been enacted.
24 (3) In this section:
25 **authorised insurer** means an insurer that, immediately before the
26 commencement day, was an authorised insurer under the former
27 CTP provisions.

1 **275** **Transitional—s 260**

2 (1) For section 260, claims against the insurer includes claims arising
3 before the commencement of this Act.

4 (2) This section expires 3 years after the commencement day.

5 **276** **Transitional regulations**

6 (1) A regulation may prescribe transitional matters necessary or
7 convenient to be prescribed because of the enactment of this Act.

8 (2) A regulation may modify this chapter to make provision in relation
9 to anything that, in the Executive's opinion, is not, or is not
10 adequately or appropriately, dealt with in this chapter.

11 (3) A regulation under subsection (2) has effect despite anything
12 elsewhere in this Act.

13 **277** **Expiry—ch 8**

14 This chapter (other than section 275) expires 1 year after the
15 commencement day.

1 **Schedule 1 Consequential amendments**

2 (see s 268)

3 **Part 1.1 Civil Law (Wrongs) Act 2002**

4 **[1.1] Section 5 (2), example**

5 *substitute*

6 **Example—scheme of compulsory third-party motor vehicle insurance**

7 the scheme under the *Road Transport (Third-Party Insurance) Act 2007*

8 **[1.2] Section 18 (3)**

9 *substitute*

10 (3) The rights given by this part for the benefit of estates of dead
11 people, and the obligations under this part against estates of dead
12 people, are additional to, and do not limit, rights or obligations
13 under the *Road Transport (Third-Party Insurance) Act 2007*.

14 **[1.3] Section 38 (3)**

15 *substitute*

16 (3) This section applies despite the *Road Transport (Third-Party*
17 *Insurance) Act 2007*, section 25 (CTP insurer to indemnify insured
18 people).

19 **[1.4] Section 50 (1)**

20 *substitute*

21 (1) This chapter applies to all claims for damages for personal injury,
22 including claims to which the *Road Transport (Third-Party*
23 *Insurance) Act 2007*, chapter 3 (Motor Accident Claims) applies.

1 **[1.5] Section 50 (4) (a)**

2 *substitute*

3 (a) the *Road Transport (Third-Party Insurance) Act 2007*,
4 chapter 3 applies to the claim; or

5 **[1.6] Section 83 (1)**

6 *substitute*

7 (1) This chapter applies to all claims for damages for personal injury,
8 including claims to which the *Road Transport (Third-Party*
9 *Insurance) Act 2007*, chapter 3 (Motor Accident Claims) applies.

10 **[1.7] Section 93 (1)**

11 *substitute*

12 (1) This part applies to all claims for damages for personal injury,
13 including claims to which the *Road Transport (Third-Party*
14 *Insurance) Act 2007*, chapter 3 (Motor Accident Claims) applies.

15 **[1.8] Section 107B (4) (b)**

16 *substitute*

17 (b) a claim to which the *Road Transport (Third-Party Insurance)*
18 *Act 2007*, chapter 3 (Motor Accident Claims) applies;

19 **[1.9] Section 108 (3) (a)**

20 *substitute*

21 (a) a claim to which the *Road Transport (Third-Party Insurance)*
22 *Act 2007*, chapter 3 (Motor Accident Claims) applies; or

- 1 **[1.10] Section 209**
- 2 *omit*
- 3 *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle
- 4 insurance)
- 5 *substitute*
- 6 *Road Transport (Third-Party Insurance) Act 2007*

7 **Part 1.2 Road Transport (Alcohol and**

8 **Drugs) Act 1977**

- 9 **[1.11] Section 1, note 2, new dot point**
- 10 *after 4th dot point, insert*
- 11
 - *Road Transport (Third-Party Insurance) Act 2007*

12 **Part 1.3 Road Transport (Dimensions and**

13 **Mass) Act 1990**

- 14 **[1.12] Section 1, note 2, new dot point**
- 15 *after 4th dot point, insert*
- 16
 - *Road Transport (Third-Party Insurance) Act 2007*

17 **Part 1.4 Road Transport (Driver**

18 **Licensing) Act 1999**

- 19 **[1.13] Section 1, note 2, new dot point**
- 20 *after 4th dot point, insert*
- 21
 - *Road Transport (Third-Party Insurance) Act 2007*

1 **Part 1.5** **Road Transport (General) Act**
2 **1999**

3 **[1.14] Section 1, note 2, new dot point**

4 *after 5th dot point, insert*

- 5 • *Road Transport (Third-Party Insurance) Act 2007*

6 **[1.15] New section 6 (fa)**

7 *insert*

8 (fa) *the Road Transport (Third-Party Insurance) Act 2007;*

9 **[1.16] Section 72 (1)**

10 *after*

11 road transport authority

12 *insert*

13 or the CTP regulator

14 **[1.17] Section 72 (1) (c)**

15 *substitute*

16 (c) a matter that appears in, or can be worked out from, the
17 CTP insurer licence register kept under the *Road Transport*
18 *(Third-Party Insurance) Act 2007;*

19 (d) a matter that appears in or can be worked out from any other
20 record kept by the authority under the road transport
21 legislation.

1 **[1.18] Section 72 (3)**

2 *after*
3 road transport authority
4 *insert*
5 or the CTP regulator

6 **[1.19] Section 90 (1) (a)**

7 *substitute*
8 (a) made by the Minister, the road transport authority, the
9 CTP regulator or the chief police officer under the road
10 transport legislation; and

11 **[1.20] New section 96 (5)**

12 *insert*
13 (5) In this section:
14 *Minister* means the Minister for the time being administering the
15 provision of the road transport legislation for which the fee, charge
16 or other amount is determined.

17 **[1.21] Part 10**

18 *omit*

19 **[1.22] Dictionary definitions of *accident, accredited operator,***
20 ***authorised insurer, certificate of insurance, claim,***
21 ***commonwealth authority, hospital treatment, insured***
22 ***motor vehicle, insured person, issue, licensed insurer, ,***
23 ***medical and surgical treatment, motor accident, nominal***
24 ***defendant, owner, public vehicle, public vehicle policy,***
25 ***registration, third-party policy, unidentified motor vehicle***
26 ***and uninsured motor vehicle***

27 *omit*

1 **Part 1.6** **Road Transport (General)**
2 **Regulation 2000**

3 **[1.23] Section 11**

4 *substitute*

5 **11 Reviewable decisions**

6 For the Act, section 90 (1) (b) (Application of pt 7 etc), the
7 decisions mentioned in schedule 1 are reviewable decisions.

8 **[1.24] New section 16 (1) (ca)**

9 *insert*

10 (ca) a fee, charge or other amount payable in relation to the issue of
11 a compulsory third-party policy under the *Road Transport*
12 (*Third-Party Insurance*) Act 2007;

13 **[1.25] Section 17 (1) (c)**

14 *substitute*

15 (c) for a fee, charge or other amount mentioned in
16 section 16 (1) (c), (ca) or (d)—the vehicle registration; or

17 **[1.26] Schedule 1, part 1.5**

18 *omit*

1 **[1.27] Schedule 1, new part 1.9A**

2 *insert*

3 **Part 1.9A Road Transport (Third-Party**
4 **Insurance) Act 2007**

5

column 1 item	column 2 provision	column 3 decision
1	45	arbitrator—refuse to approve premium
2	177 (1)	CTP regulator—refuse to issue CTP insurer licence
3	178 (2) (b)	CTP regulator—decide to issue CTP insurer licence subject to condition
4	178 (4)	CTP regulator—amend CTP insurer licence by including condition or, amending or revoking condition
5	187	CTP regulator—suspend CTP insurer licence
6	188	CTP regulator—suspend CTP insurer licence
7	191 (2) (a)	CTP regulator—impose civil penalty on CTP insurer
8	194 (1)	CTP regulator—cancel CTP insurer licence
9	198	CTP regulator—not transfer CTP insurer licence

1 **Part 1.7** **Road Transport (Offences)**
2 **Regulation 2005**

3 **[1.28] Section 8 (1) (c)**

4 *omit*

5 **[1.29] Schedule 1, part 1.7, items 16 to 35**

6 *omit*

7 **[1.30] Schedule 1, part 1.9**

8 *omit*

Schedule 1 Consequential amendments
Part 1.7 Road Transport (Offences) Regulation 2005

Amendment [1.31]

1 **[1.31] Schedule 1, new part 1.13A**

2 *insert*

3 **Part 1.13A Road Transport (Third-Party Insurance) Act 2007**

column 1 item	column 2 offence provision and, if relevant, case	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
1	17 (1)	use uninsured motor vehicle	50	484	

1 **Part 1.8** **Road Transport (Public**
2 **Passenger Services) Act 2001**

3 **[1.32] New section 126 (3A)**

4 *insert*

- 5 (3A) A regulation may make provision in relation to insurance against
6 liability for damage to property caused by, or arising out of the use
7 of, a public passenger vehicle.

8 **Part 1.9** **Road Transport (Safety and**
9 **Traffic Management) Act 1999**

10 **[1.33] Section 1, note 2, new dot point**

11 *after 4th dot point, insert*

- 12
 - *Road Transport (Third-Party Insurance) Act 2007*

13 **Part 1.10** **Road Transport (Vehicle**
14 **Registration) Act 1999**

15 **[1.34] Section 1, note 2, new dot point**

16 *after last dot point, insert*

- 17
 - *Road Transport (Third-Party Insurance) Act 2007*

1 Dictionary

2 (see s 3)

3 *Note 1* The Legislation Act contains definitions and other provisions relevant to
4 this Act.

5 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 6 • corporation
- 7 • Corporations Act
- 8 • financial year
- 9 • person
- 10 • State
- 11 • under.

12 *Note 3* If a word or expression is defined in an Act (but not a regulation or
13 another publication) included in the road transport legislation, the
14 definition applies to each use of the word or expression in other road
15 transport legislation unless the contrary intention appears (see *Road*
16 *Transport (General) Act 1999*, s 8).

17 ***appointed auditor***, for part 4.6 (Supervision of licensed insurers)—
18 see section 215.

19 ***APRA*** means the Australian Prudential Regulation Authority
20 established under the *Australian Prudential Regulation Authority*
21 *Act 1998* (Cwlth), section 7.

22 ***ASIC*** means the Australian Securities and Investments Commission
23 under the *Australian Securities and Investments Commission*
24 *Act 2001* (Cwlth).

25 ***assessment of damages notice***, for division 3.6.3 (Rehabilitation
26 services)—see section 122.

27 ***authorised person***, for chapter 5 (Enforcement)—see section 240.

28 ***business plan***—see section 202.

29 ***business plan guidelines***—see section 207.

- 1 ***civil penalty and censure committee***, for part 4.3 (Suspension of
2 CTP insurer licence)—see section 191.
- 3 ***claimant***, for a motor accident claim—see section 70.
- 4 ***compliance notice***, for part 3.10 (Judgment for noncompliance with
5 time limits)—see section 152.
- 6 ***complying notice of claim***, for chapter 3 (Motor accident claims)—
7 see section 68.
- 8 ***compulsory conference***, for chapter 3 (Motor accident claims)—see
9 section 130.
- 10 ***compulsory third-party policy***—see section 18.
- 11 ***connected***, for chapter 5 (Enforcement)—see section 240.
- 12 ***contribution notice***, for chapter 3 (Motor accident claims)—see
13 section 85.
- 14 ***contributor***, for a motor accident claim, for chapter 3 (Motor
15 accident claims)—see section 85.
- 16 ***costs***, for part 3.11 (CTP insurer and nominal defendant may
17 recover costs incurred)—see section 158.
- 18 ***court***, for a motor accident claim, for chapter 3 (Motor accident
19 claims)—see section 68.
- 20 ***credit card*** includes a debit card.
- 21 ***CTP claims register***—see section 261.
- 22 ***CTP insurance business***, for a licensed insurer—see section 11.
- 23 ***CTP insured person***—see section 16.
- 24 ***CTP insurer***—see section 23.
- 25 ***CTP insurer licence***—see section 171.
- 26 ***CTP policy***—see section 18.

- 1 **CTP policy issued by an insolvent insurer**, for part 4.7 (Insolvent
2 insurers)—see section 229.
- 3 **CTP premium**, for a CTP policy—see section 37.
- 4 **CTP premium board**—see section 47.
- 5 **CTP premium guidelines**—see section 39.
- 6 **CTP regulator**—see section 264.
- 7 **drive a vehicle** includes—
- 8 (a) be in control of the steering, movement or propulsion of the
9 vehicle; and
- 10 (b) if the vehicle is a trailer—draw or tow the vehicle; and
- 11 (c) if the vehicle can be ridden—ride the vehicle.
- 12 **driver**, of a vehicle, means the person who is driving the vehicle.
- 13 **enforcing party**, for part 3.10 (Judgment for noncompliance with
14 time limits)—see section 152.
- 15 **former licensed insurer**, for chapter 4 (Licensing of insurers)—see
16 section 172.
- 17 **injured person**—see section 7.
- 18 **insolvent insurer**, for part 4.7 (Insolvent insurers)—see section 229.
- 19 **insolvent insurer declaration**, for part 4.7 (Insolvent insurers)—see
20 section 231.
- 21 **insurance industry deed**—see section 9.
- 22 **insured motor vehicle**—see section 15.
- 23 **insured person**, for a motor accident claim—see section 72.
- 24 **insurer**, for chapter 3 (Motor accident claims)—see section 73.
- 25 **issue**, of a CTP policy, includes the issue of a renewal of the policy.

- 1 **late party**, for part 3.10 (Judgment for noncompliance with time
2 limits)—see section 152.
- 3 **later respondent**, for a motor accident claim, for chapter 3 (Motor
4 accident claims)—see section 83.
- 5 **licensed insurer**—see section 172.
- 6 **liquidator**, for part 4.7 (Insolvent insurers)—see section 229.
- 7 **mandatory final notice**—see section 135.
- 8 **mandatory final offer**, for chapter 3 (Motor accident claims)—see
9 section 135.
- 10 **market share**, of a licensed insurer, for part 4.6 (Supervision of
11 licensed insurers)—see section 207.
- 12 **medical and rehabilitation guidelines**—see section 129.
- 13 **medical expenses**, for chapter 3 (Motor accident claims)—see
14 section 114.
- 15 **medical treatment**, for chapter 3 (Motor accident claims)—see
16 section 68.
- 17 **motor accident**—see section 7.
- 18 **motor accident claim**, for a motor accident—see section 69.
- 19 **motor vehicle**—see the *Road Transport (General) Act 1999*,
20 dictionary.
- 21 **Note** The *Road Transport (General) Act 1999*, dict, defines **motor vehicle** as
22 a vehicle built to be propelled by a motor that forms part of the vehicle.
- 23 **nominal defendant**—see section 59.
- 24 **nominal defendant fund**—see section 66.
- 25 **notice of claim**, for a motor accident claim, for chapter 3 (Motor
26 accident claims)—see section 76.
- 27 **occupier**, for chapter 5 (Enforcement)—see section 240.

- 1 **offence**, for chapter 5 (Enforcement)—see section 240.
- 2 **owner**—
- 3 (a) of a registered motor vehicle—see section 12; or
- 4 (b) of an unregistered motor vehicle—see section 13.
- 5 **party**, for a motor accident claim, for chapter 3 (Motor accident
- 6 claims)—see section 68.
- 7 **personal injury**—see section 6.
- 8 **possession**, of a motor vehicle—see section 14.
- 9 **provided rehabilitation services**, for division 3.6.3 (Rehabilitation
- 10 services)—see section 119.
- 11 **registered motor vehicle**—see section 30.
- 12 **registered operator**—see the *Road Transport (Vehicle Registration)*
- 13 *Act 1999*, dictionary.
- 14 **rehabilitation**, for chapter 3 (Motor accident claims)—see
- 15 section 117.
- 16 **rehabilitation services**—see section 118.
- 17 **related body corporate**—see the Corporations Act, section 9
- 18 (Dictionary).
- 19 **relevant claim information**, for part 3.3 (Obligations on parties to
- 20 give documents and information)—see section 95.
- 21 **relevant notice claim**, for part 3.10 (Judgment for noncompliance
- 22 with time limits)—see section 153.
- 23 **required document**, for part 3.3 (Obligations on parties to give
- 24 documents and information)—see section 94.
- 25 **required thing**, for part 3.10 (Judgment for noncompliance with
- 26 time limits)—see section 151.

1 **respondent**, for a motor accident claim, for chapter 3 (Motor
2 accident claims)—see section 71.

3 **respondents' claim manager**, for a motor accident claim, for
4 chapter 3 (Motor accident claims)—see section 84.

5 **response**, for a motor accident claim, for chapter 3 (Motor accident
6 claims)—see section 82.

7 **ride**, for the rider of a motorbike or an animal-drawn vehicle,
8 includes be in control of the vehicle.

9 **rider**, of a vehicle that can be ridden, means the person who is riding
10 the vehicle.

11 **road** means an area that is open to or used by the public and is
12 developed for, or has as 1 of its main uses, the driving or riding of
13 motor vehicles, but does not include an area that would otherwise be
14 a road so far as a declaration under the *Road Transport (General)*
15 *Act 1999*, section 12 (Power to include or exclude areas in road
16 transport legislation) declares that this Act does not apply to the
17 area.

18 **road related area**—

19 (a) means—

20 (i) an area that divides a road; or

21 (ii) a footpath or nature strip adjacent to a road; or

22 (iii) an area that is open to the public and is designated for use
23 by cyclists or animals; or

24 (iv) an area that is not a road and that is open to or used by the
25 public for driving, riding or parking vehicles; or

26 (v) a shoulder of a road; or

1 (vi) any other area that is open to or used by the public so far
2 as a declaration under the *Road Transport (General)*
3 *Act 1999*, section 12 (Power to include or exclude areas in
4 road transport legislation) declares that this Act applies to
5 the area; but

6 (b) does not include an area that would otherwise be a road related
7 area so far as a declaration under that section declares that this
8 Act does not apply to the area.

9 ***road transport authority*** means the Australian Capital Territory
10 Road Transport Authority.

11 *Note* The chief executive of the department responsible for the *Road*
12 *Transport (General) Act 1999* is the road transport authority (see *Road*
13 *Transport (General) Act 1999*, s 16).

14 ***road transport legislation***—see the *Road Transport (General)*
15 *Act 1999*, section 6.

16 ***third-party funds***, of a licensed insurer, for part 4.6 (Supervision of
17 licensed insurers)—see section 210.

18 ***trailer*** means a vehicle being towed, or built to be towed, by a motor
19 vehicle, but does not include a motor vehicle being towed.

20 ***unidentified motor vehicle***—see section 62.

21 ***uninsured motor vehicle***—see section 60.

22 ***use***, a motor vehicle—see section 8.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2007.

2 Notification

Notified under the Legislation Act on 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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