

2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Special Minister of State)

Motor Accident Injuries Amendment Bill 2023

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2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Special Minister of State)

Motor Accident Injuries Amendment Bill 2023

A Bill for

An Act to amend the *Motor Accident Injuries Act 2019*

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

1 **1 Name of Act**

2 This Act is the *Motor Accident Injuries Amendment Act 2023*.

3 **2 Commencement**

4 This Act commences on the 7th day after its notification day.

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

7 **3 Legislation amended**

8 This Act amends the *Motor Accident Injuries Act 2019*.

9 **4 Meaning of *AWE indexed* for amount**
10 **Section 18 (1), definition of *AWE indexed*, paragraph (c)**

11 *substitute*

12 (c) rounded up to the nearest—

13 (i) for an amount referred to in section 96, section 97 or
14 section 103—dollar; or

15 (ii) in any other case—whole \$10.

16 **5 Duty to act in good faith—applicants, claimants and**
17 **insurers**
18 **Section 20 (5)**

19 *after*

20 court

21 *insert*

22 or the ACAT

- 1 **6 Delegation by MAI commission**
2 **Section 30 (1) (a)**
- 3 *omit*
- 4 **7 Definitions—div 2.2.2**
5 **Section 42, new definition of *found guilty***
- 6 *insert*
- 7 *found guilty*, of an offence—
- 8 (a) includes having the offence taken into account under the *Crimes*
9 *(Sentencing) Act 2005*, section 57 (Outstanding additional
10 offences taken into account in sentencing); but
- 11 (b) does not include having an order made for the offence under the
12 *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction
13 orders—general).
- 14 **8 Section 42, definition of *non-conviction order***
- 15 *omit*
- 16 **9 Entitlement limited—single driving offence**
17 **Section 44 (5)**
- 18 *omit*
- 19 **10 No entitlement—multiple driving offences**
20 **Section 45 (5)**
- 21 *substitute*
- 22 (5) If the injured person is convicted or found guilty of only 1 driving
23 offence, any entitlement to income replacement benefits or quality of
24 life benefits by the injured person ends—
- 25 (a) if the injured person does not appeal the conviction or finding of
26 guilt—at the end of the appeal period for the offence; or

1 (b) if the injured person appeals the conviction or finding of guilt—
2 when the appeal is finalised and the conviction or finding of guilt
3 is upheld.

4 **11 No entitlement—serious offences**
5 **Section 48 (5)**

6 *omit*

7 **12 Entitlement limited—workers compensation applicant**
8 **Section 50 (3), new note**

9 *insert*

10 *Note 2* See also the withdrawal requirements under s 73 (4).

11 **13 When entitlement to certain benefits ends**
12 **Section 51 (2), new note**

13 *insert*

14 *Note 1A* See also divs 2.6.2 and 2.6.3, which provide for when a quality of life
15 benefits application is finally dealt with.

16 **14 Meaning of *authority to disclose personal health***
17 ***information***
18 **Section 54 (1), definition of *authority to disclose personal***
19 ***health information*, paragraph (b) (i) (E)**

20 *omit*

21 independent health assessor

22 *substitute*

23 independent assessor

1 **15 Application for defined benefits—authority to disclose**
2 **personal health information**
3 **Section 57 (5), definition of *information disclosure***
4 ***content*, paragraph (a) (i) (E)**

5 *omit*

6 independent health assessor

7 *substitute*

8 independent assessor

9 **16 Dispute about liability for application**
10 **Section 70 (5) (b)**

11 *substitute*

12 (b) any defined benefits already paid;

13 **17 Application for defined benefits—notification of**
14 **application under workers compensation scheme**
15 **Section 73 (4), note**

16 *omit*

17 **18 Section 73 (5), new note**

18 *insert*

19 *Note* A person's entitlement to certain defined benefits ends on the day an
20 application is accepted, however may be revived if the person's workers
21 compensation application is withdrawn within 13 weeks after the date of
22 the motor accident or denied (see s 50 (3)).

1 **19** **Meaning of *AWE adjusted*—div 2.4.3**
2 **Section 94 (4), example**

3 *substitute*

4 **Example—adjustments**

5 On 30 September 2020, Penny has pre-injury income of \$1 500 per week. Penny's
6 entitlement to income replacement benefits started on 15 June 2020.

7 The adjustment days prescribed for pre-injury income are 1 April and 1 October.

8 The AWE last published before 1 October 2020 (for May 2020) is \$1 884.30. The
9 AWE published for November 2019 (being 6 months before May 2020) is
10 \$1 856.80.

11 The AWE adjustment factor for Penny's pre-injury income is calculated as follows:

12
$$\$1\,884.30 \div \$1\,856.0 = 1.015 \text{ (rounded to 3 decimal places).}$$

13 The amount of Penny's pre-injury income on the 1 October 2020 adjustment date
14 is calculated as follows:

15
$$\$1\,500 \times 1.015 = \$1\,522.50.$$

16 Penny's benefit from the adjustment date of 1 October 2020 is \$1 522.50, rounded
17 to \$1 523.

18 **20** **Notice required to reduce or stop income replacement**
19 **benefit payments**
20 **Section 107 (2) (b)**

21 *substitute*

22 (b) the income replacement benefit payments have been suspended
23 under—

24 (i) section 105 (Suspension of benefit payments—failure to
25 comply with request for assessment); or

26 (ii) section 121 (3) (Assessment of injured person's injuries);
27 or

28 (iii) section 124A (Recovery plan—suspension of benefits);

1 **21 Assessment of injured person's injuries**
2 **Section 121 (3)**

3 *substitute*

- 4 (3) If the injured person fails, without reasonable excuse, to comply with
5 the relevant insurer's request, the relevant insurer may suspend either
6 or both of the following until the person complies with the request:
- 7 (a) the person's treatment and care benefits;
 - 8 (b) the person's income replacement benefit payments.

9 **22 Section 121 (4) (b)**

10 *after*

11 the benefits

12 *insert*

13 or payments

14 **23 New section 124A**

15 *insert*

16 **124A Recovery plan—suspension of benefits**

- 17 (1) If an injured person fails, without reasonable excuse, to undergo the
18 treatment and care stated in the person's recovery plan, the relevant
19 insurer may suspend either or both of the following until the person
20 undergoes the treatment and care:
- 21 (a) the person's treatment and care benefits;
 - 22 (b) the person's income replacement benefit payments.
- 23 (2) If the relevant insurer decides to suspend the injured person's benefit
24 or payment, the insurer must give the injured person written notice
25 (a *suspension notice*) stating—
- 26 (a) the reasons for the suspension; and

- 1 (b) the actions the injured person may take to avoid the benefits or
2 payments being suspended; and
- 3 (c) the date the suspension takes effect; and
- 4 (d) that the injured person may seek internal review of the
5 suspension under part 2.10 (Defined benefits—dispute
6 resolution).
- 7 (3) A suspension notice must be given to the injured person at least
8 2 weeks before the date the suspension takes effect.
- 9 (4) The MAI guidelines may provide for the matters that must be taken
10 into consideration by an insurer in deciding to suspend an injured
11 person’s benefits or payments.

12 **24 Quality of life benefits application**
13 **Section 137 (1)**

14 *substitute*

- 15 (1) A person may apply to the relevant insurer for a motor accident for
16 quality of life benefits (a *quality of life benefits application*) if the
17 insurer accepts, or is taken to have accepted, liability for defined
18 benefits under section 65.

19 **25 Section 137 (3) (a)**

20 *substitute*

- 21 (a) request that the relevant insurer refer the injured person to an
22 authorised IME provider for a WPI assessment; and

26 New section 137 (4)

insert

(4) To remove any doubt, if a person makes a quality of life benefits application—

(a) the relevant insurer must refer the injured person to an authorised IME provider for a first WPI assessment in accordance with this division; and

Note If a person has injuries to more than 1 body system, the WPI assessment of each body system may be carried out by different medical examiners or combined in accordance with the WPI assessment guidelines (see s 151).

(b) the injured person may arrange for a private medical examiner to carry out a second or subsequent WPI assessment only in accordance with section 158 (Second WPI report).

**27 WPI assessment 4 years 6 months after motor accident
Section 141 (1) (a)**

substitute

(a) the relevant insurer for a motor accident receives a quality of life benefits application from a person injured in the accident and—

(i) section 138 applies to the person; or

(ii) section 140 applies to the person; or

(iii) both of the following apply:

(A) the person is receiving income replacement benefits or, because of the circumstances prescribed by regulation, would have been eligible to receive income replacement benefits;

(B) the person's injuries may have a significant occupational impact on the person's ability to undertake employment; and

1 **28 Section 141 (4) (a)**

2 *substitute*

3 (a) either of the following applies:

4 (i) if separate reports from an independent medical examiner
5 assess an injured person's physical injuries and
6 psychological injuries—the higher estimated WPI is at
7 least 5%;

8 (ii) if only 1 WPI report from an independent medical
9 examiner assesses an injured person's WPI—the estimated
10 WPI is at least 5%; and

11 **29 WPI assessment—multiple body systems affected**
12 **Section 151 (d)**

13 *substitute*

14 (d) the WPI assessments for a primary psychological injury must be
15 conducted in accordance with the WPI guidelines to decide the
16 person's WPI for their psychological injuries.

17 **30 New section 151 (2)**

18 *insert*

19 (2) In this section:

20 *injury*, to a person's body system, includes a primary psychological
21 injury to the person.

22 *primary psychological injury*—see section 150 (6).

- 1 **31 Section 154 heading**
- 2 *substitute*
- 3 **154 WPI less than 5%—insurer may make offer**
- 4 **32 Section 154 (2) (b)**
- 5 *omit*
- 6 , taking into account each WPI report
- 7 **33 Section 154 (4)**
- 8 *substitute*
- 9 (4) If the injured person does not notify the insurer, and give the insurer
- 10 the second WPI report, within the 26 weeks, the person is taken to
- 11 have accepted—
- 12 (a) if the relevant insurer has made an offer—the offer; and
- 13 (b) if the relevant insurer has not made an offer—each report stated
- 14 in the notice under subsection (2).
- 15 **34 Section 154 (6)**
- 16 *before*
- 17 the report
- 18 *insert*
- 19 the offer or
- 20 **35 Section 155 heading**
- 21 **155 WPI 5% to 9%—insurer must make offer**

1 **36 WPI 10% or more—injured person entitled to make motor**
2 **accident claim**
3 **Section 157 (8), definition of *due date*, new paragraph (c)**

4 *insert*

5 (c) if the injured person gives a complying notice of claim—
6 6 weeks after the date the claim is finally decided.

7 **37 Section 157 (8), new definition of *complying notice of***
8 ***claim***

9 *insert*

10 *complying notice of claim*—see section 257.

11 **38 Second WPI report—original WPI may be affirmed or**
12 **increased**
13 **Section 159 (1) (a)**

14 *substitute*

15 (a) the relevant insurer for a motor accident receives—

16 (i) if separate first WPI reports are provided for the injured
17 person’s physical injuries and psychological injuries—at
18 least 1 second WPI report; or

19 (ii) if only 1 first WPI report is provided—a second WPI
20 report; and

21 **39 Final offer WPI less than 5%**
22 **New section 161 (1) (b) (iii)**

23 *insert*

24 (iii) if separate WPI reports assess an injured person’s physical
25 injuries and psychological injuries—how the final offer
26 WPI was determined.

1 **40 Section 161 (1) (c)**

2 *omit*

3 **41 Section 161 (2)**

4 *substitute*

5 (2) In this section:

6 *stated time* means—

- 7 (a) if separate first WPI reports are provided for the injured person's
8 physical injuries and psychological injuries and the insurer
9 requests the IME provider arrange a review of only 1 report
10 under section 159—14 days after receiving the IME provider's
11 notice of affirmation or increase; or
- 12 (b) if separate first WPI reports are provided for the injured person's
13 physical injuries and psychological injuries and the insurer
14 requests the IME provider arrange a review of both reports under
15 section 159—14 days after receiving the IME provider's notice
16 of affirmation or increase for both reports; or
- 17 (c) if only 1 first WPI report is provided and the insurer requests the
18 IME provider arrange a review under section 159—14 days after
19 receiving the IME provider's notice of affirmation or increase;
20 or
- 21 (d) if separate first WPI reports are provided for the injured person's
22 physical injuries and psychological injuries and the insurer did
23 not request the IME provider arrange a review of either report
24 under section 159—28 days after receiving the later of the
25 second WPI reports; or
- 26 (e) if only 1 first WPI report is provided and the insurer did not
27 request the IME provider arrange a review under section 159—
28 28 days after receiving the second WPI report.

1 **42 Final offer WPI 5% to 9%**
2 **New section 162 (1) (b) (iii)**

3 *insert*

- 4 (iii) if separate WPI reports assess an injured person's physical
5 injuries and psychological injuries—how the final offer
6 WPI was determined; and

7 **43 Section 162 (5), definition of *stated time***

8 *substitute*

9 *stated time* means—

- 10 (a) if separate first WPI reports are provided for the injured person's
11 physical injuries and psychological injuries and the insurer
12 requests the IME provider arrange a review of only 1 report
13 under section 159—14 days after receiving the IME provider's
14 notice of affirmation or increase; or
- 15 (b) if separate first WPI reports are provided for the injured person's
16 physical injuries and psychological injuries and the insurer
17 requests the IME provider arrange a review of both reports under
18 section 159—14 days after receiving the IME provider's notice
19 of affirmation or increase for both reports; or
- 20 (c) if only 1 first WPI report is provided and the insurer requests the
21 IME provider arrange a review under section 159—14 days after
22 receiving the IME provider's notice of affirmation or increase;
23 or
- 24 (d) if separate first WPI reports are provided for the injured person's
25 physical injuries and psychological injuries and the insurer did
26 not request the IME provider arrange a review of either report
27 under section 159—28 days after receiving the later of the
28 second WPI reports; or

- 1 (e) if only 1 first WPI report is provided and the insurer did not
2 request the IME provider arrange a review under section 159—
3 28 days after receiving the second WPI report.

4 **44 Final offer WPI 10% or more—injured person not entitled**
5 **to make motor accident claim**
6 **New section 163 (2) (b) (iii)**

7 *insert*

- 8 (iii) if separate WPI reports assess an injured person's physical
9 injuries and psychological injuries—how the final offer
10 WPI was determined; and

11 **45 Section 163 (6), definition of *stated time***

12 *substitute*

13 *stated time* means—

- 14 (a) if separate first WPI reports are provided for the injured person's
15 physical injuries and psychological injuries and the insurer
16 requests the IME provider arrange a review of only 1 report
17 under section 159—14 days after receiving the IME provider's
18 notice of affirmation or increase; or
- 19 (b) if separate first WPI reports are provided for the injured person's
20 physical injuries and psychological injuries and the insurer
21 requests the IME provider arrange a review of both reports under
22 section 159—14 days after receiving the IME provider's notice
23 of affirmation or increase for both reports; or
- 24 (c) if only 1 first WPI report is provided and the insurer requests the
25 IME provider arrange a review under section 159—14 days after
26 receiving the IME provider's notice of affirmation or increase;
27 or

- 1 (d) if separate first WPI reports are provided for the injured person's
2 physical injuries and psychological injuries and the insurer did
3 not request the IME provider arrange a review of either report
4 under section 159—28 days after receiving the later of the
5 second WPI reports; or
- 6 (e) if only 1 first WPI report is provided and the insurer did not
7 request the IME provider arrange a review under section 159—
8 28 days after receiving the second WPI report.

9 **46 Final offer WPI 10% or more—injured person entitled to**
10 **make motor accident claim**
11 **New section 164 (2) (b) (iii)**

12 *insert*

- 13 (iii) if separate WPI reports assess an injured person's physical
14 injuries and psychological injuries—how the final offer
15 WPI was determined; and

16 **47 Section 164 (6)**

17 *substitute*

- 18 (6) In this section:
19 *complying notice of claim*—see section 257.
20 *due date* means the later of—
21 (a) 5 years after the date of the motor accident; and
22 (b) 26 weeks after the person receives the notice; and
23 (c) if the injured person gives a complying notice of claim—
24 6 weeks after the date the claim is finally decided.

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stated time means—

- (a) if separate WPI reports were provided for the injured person's physical injuries and psychological injuries and the insurer requested the IME provider arrange a review of only 1 report under section 159—14 days after receiving the IME provider's notice of affirmation or increase; or
- (b) if separate first WPI reports were provided for the injured person's physical injuries and psychological injuries and the insurer requested the IME provider arrange a review of both reports under section 159—14 days after receiving the IME provider's notice of affirmation or increase for both reports; or
- (c) if only 1 first WPI report was provided and the insurer requested the IME provider arrange a review under section 159—14 days after receiving the IME provider's notice of affirmation or increase; or
- (d) if separate first WPI reports are provided for the injured person's physical injuries and psychological injuries and the insurer did not request the IME provider arrange a review of either report under section 159—28 days after receiving the later of the second WPI reports; or
- (e) if only 1 first WPI report is provided and the insurer did not request the IME provider arrange a review under section 159—28 days after receiving the second WPI report.

1 **48 WPI assessment—relevant insurer to pay**
2 **Section 165 (2) and (3)**

3 *substitute*

4 (2) If section 151 does not apply, the relevant insurer is only liable for
5 the costs of—

6 (a) 1 WPI assessment of the person’s physical injuries; and

7 (b) if the person may request a WPI assessment of the person’s
8 primary psychological injury under section 150—1 WPI
9 assessment of the person’s primary psychological injury.

10 (3) If section 151 applies, the relevant insurer is only liable for the costs
11 of 1 WPI assessment for each affected body system.

12 (4) In this section:

13 *injury*, to a person’s body system, includes a primary psychological
14 injury to the person.

15 *primary psychological injury*—see section 150 (6).

16 **49 Effect of certain WPI assessments on motor accident**
17 **claim**
18 **Section 166 (b)**

19 *omit*

20 section 157 (2)

21 *substitute*

22 section 157 (3)

1 **50 Section 206**

2 *substitute*

3 **206 Meaning of *independent assessor***

4 In this Act:

5 *independent assessor*—

6 (a) means a person who conducts SOI assessments under an
7 arrangement with an authorised IME provider; but

8 (b) does not include a person prescribed by regulation.

9 **51 Meaning of *SOI assessment* and *SOI report***
10 **Section 207 (1), definition of *SOI assessment***

11 *omit*

12 a health assessment

13 *substitute*

14 an assessment

15 **52 Section 207 (1), definition of *SOI report***

16 *omit*

17 independent health assessor

18 *substitute*

19 independent assessor

20 **53 Section 207 (2)**

21 *omit*

1 **54 SOI assessment guidelines**
2 **Section 208 (2) (a)**

3 *substitute*

- 4 (a) state procedures and principles to be followed in making an SOI
5 assessment; and

6 **55 SOI assessment 4 years 6 months after motor accident**
7 **Section 209 (1)**

8 *substitute*

- 9 (1) This section applies if—

- 10 (a) a person injured in a motor accident is receiving income
11 replacement benefits or, because of the circumstances
12 prescribed by regulation, would have been eligible to receive
13 income replacement benefits; and

- 14 (b) the person made a quality of life benefits application and—

- 15 (i) if separate WPI reports from an independent medical
16 examiner assess the person's physical injuries and
17 psychological injuries—the higher WPI assessment
18 assesses the person's WPI as less than 10%; or

- 19 (ii) if only 1 WPI report from an independent medical
20 examiner assesses the person's WPI—the person's WPI is
21 less than 10%; and

- 22 (c) the relevant insurer has not previously referred the injured
23 person to an authorised IME provider under this section for an
24 SOI assessment in relation to the injuries; and

- 25 (d) 4 years and 6 months has passed since the date of the motor
26 accident; and

- 27 (e) the person consents to the relevant insurer referring the injured
28 person to an authorised IME provider for an SOI assessment.

1 **56 Arrangement of SOI assessment**
2 **Section 210 (2) (a)**

3 *omit*

4 independent health assessors

5 *substitute*

6 independent assessors

7 **57 Sections 211 (1) and 212 (1)**

8 *omit*

9 independent health assessor

10 *substitute*

11 independent assessor

12 **58 SOI report—injury has significant occupational impact**
13 **Section 213 (1)**

14 *substitute*

15 (1) This section applies if—

16 (a) a relevant insurer refers an injured person to an authorised IME
17 provider for an SOI assessment; and

18 (b) the authorised IME provider arranges for an independent
19 medical examiner or independent assessor to carry out an SOI
20 assessment of the person; and

21 (c) an SOI report from the independent medical examiner or
22 independent assessor confirms the person's injury has a
23 significant occupational impact on the person's ability to
24 undertake employment.

1 **59 Section 213 (3)**

2 *omit*
3 making
4 *substitute*
5 reviving

6 **60 SOI report—no significant occupational impact—ACAT**
7 **review**
8 **New section 215 (3)**

9 *insert*
10 (3) The independent medical examiner or independent assessor who
11 carries out the SOI assessment of the injured person must not be—
12 (a) named as a respondent to an application made under
13 subsection (1); or
14 (b) joined as a party to an application made under subsection (1).

15 **61 ACAT review—decision**
16 **Section 218 (2) and (3)**

17 *omit*
18 independent health assessor
19 *substitute*
20 independent assessor

21 **62 New section 218 (4A)**

22 *insert*
23 (4A) To remove any doubt, if the ACAT makes an order under
24 subsection (1) (b), section 213 applies as if the decision of the ACAT
25 is an SOI report from an independent medical examiner or
26 independent assessor.

1 **63 Future treatment payment—assessment and calculation**
2 **Section 223 (d)**

3 *before*

4 give the applicant

5 *insert*

6 within 2 months after the day the application is made,

7 **64 New section 223 (d) (iv) (C)**

8 *insert*

9 (C) an amount agreed to under this section (including a
10 negotiated amount) applies only to future medical
11 treatment.

12 **65 Award of damages—requirements**
13 **Section 239 (1) (a)**

14 *substitute*

15 (a) has made a quality of life benefits application under
16 division 2.6.2 (Quality of life benefits—application) and
17 either—

18 (i) an assessment has been conducted by an independent
19 medical examiner under division 2.6.3 (Quality of life
20 benefits—WPI assessment) and the person has been
21 assessed as having a WPI of at least 10% as a result of the
22 accident; or

23 (ii) the insurer has decided the person has a WPI of at least
24 10% and has made a final offer WPI; or

1 **66 Section 239 (3)**

2 *substitute*

3 (3) For this section, a person has been assessed as having a WPI of at
4 least 10% as a result of the accident if—

5 (a) if separate WPI reports assess the person’s physical injuries and
6 psychological injuries—the higher WPI assessment assesses the
7 person’s WPI as at least 10%; or

8 (b) if only 1 WPI report assesses the person’s WPI—the person’s
9 WPI assessment assesses the person’s WPI as at least 10%.

10 *Note* If an injured person has physical and psychological injuries, a WPI
11 assessment of a physical injury may take into account a secondary
12 psychological injury (see s 150 (4)).

13 **67 WPI assessment—application and assessment**
14 **Section 241 (3) (c)**

15 *substitute*

16 (c) a reference in section 137 (1) (Quality of life benefits
17 application) to an insurer accepting liability were a reference to
18 receiving an acknowledgement notice; and

19 **68 Section 241 (3) (e)**

20 *omit*

21 **69 Section 241 (4) (a)**

22 *substitute*

23 (a) section 154 (2) (b) (WPI less than 5%—insurer may make
24 offer);

25 (aa) section 155 (3) (b), (5) and (7) (WPI 5% to 9%—insurer must
26 make offer);

1 **70 New section 241 (4) (ca)**

2 *before the note, insert*

3 (ca) section 161 (1) (c) (Final offer WPI less than 5%);

4 **71 New section 241 (5)**

5 *insert*

6 (5) If the injured person makes an application under subsection (1), a
7 reference to income benefits in section 209 (1) (a) (SOI assessment
8 4 years 6 months after motor accident) is taken to be a reference to
9 payments for the loss of income under a workers compensation
10 scheme.

11 **72 Establishment of nominal defendant fund**
12 **Section 330 (2) (a)**

13 *substitute*

14 (a) any penalties or penalty interest imposed under this Act, other
15 than a penalty imposed under part 7.6A (Financial penalties);

16 **73 Compliance with certain provisions**
17 **New section 365 (h)**

18 *before the note, insert*

19 (h) section 412A (Notice of reportable conduct).

1 **74 New section 366A**

2 *insert*

3 **366A Compliance with directions and remediation plans**

4 It is a condition of an MAI insurer licence that the licensed insurer
5 complies with the following:

6 (a) any direction given to the insurer by the MAI commission under
7 section 394G;

8 (b) any remediation plan approved by the MAI commission under
9 section 394I (5) (a).

10 **75 Suspended insurer selected after suspension**
11 **Section 389 (1)**

12 *omit*

13 road transport authority

14 *substitute*

15 MAI commissioner

16 **76 Section 389 (4)**

17 *omit*

18 must allocate

19 *substitute*

20 must not allocate

1 **77 MAI commission may choose occupational discipline**
2 **instead of prosecution**
3 **Section 391**

4 *omit*

5 MAI insurer

6 *substitute*

7 MAI commission

8 **78 Occupational discipline orders**
9 **Section 394 (2), except note**

10 *substitute*

- 11 (2) In addition to any other occupational discipline order that the ACAT
12 may make, the ACAT may require the licensed insurer to pay an
13 amount of not more than \$100 000 to the Territory or someone else.

14 **79 New parts 7.6A and 7.6B**

15 *insert*

16 **Part 7.6A Financial penalties**

17 **394A Definitions—pt 7.6A**

18 In this part:

19 *financial penalty notice*—see section 394D (3).

20 *ground for financial penalty*—see section 394B.

21 *minor contravention* means conduct by a licensed insurer that
22 constitutes a ground for financial penalty that does not involve a
23 serious contravention.

- 1 *serious contravention* means conduct by a licensed insurer that
2 constitutes a ground for financial penalty that involves any of the
3 following:
- 4 (a) dishonest or misleading conduct by the licensed insurer;
- 5 (b) underpayment or delay in paying defined benefits by the
6 licensed insurer;
- 7 (c) failure by the licensed insurer to ensure protected information is
8 disclosed only in accordance with section 371;
- 9 (d) failure by the licensed insurer to comply with an order of the
10 ACAT made for this Act;
- 11 (e) anything else prescribed by regulation.

12 **394B Meaning of *ground for financial penalty*—pt 7.6A**

13 For this part, each of the following is a *ground for financial penalty*
14 in relation to a licensed insurer:

- 15 (a) the licensed insurer has contravened this Act;
- 16 (b) the licensed insurer has contravened a condition of the MAI
17 insurer licence;
- 18 (c) the licensed insurer has contravened the insurance industry
19 deed.

20 **394C Notice of proposed financial penalty**

- 21 (1) The MAI commission may propose to impose a financial penalty on
22 the insurer if the commission is satisfied that—
- 23 (a) a ground for financial penalty exists in relation to the insurer;
24 and
- 25 (b) the imposition of the financial penalty is in the public interest.

- 1 (2) The MAI commission must give the insurer a written notice about the
2 proposed financial penalty (a *show cause notice*) stating—
- 3 (a) the grounds on which the commission is proposing to impose a
4 financial penalty; and
- 5 (b) whether the proposed financial penalty is for a minor or serious
6 contravention; and
- 7 (c) the amount of the proposed financial penalty; and
- 8 (d) that the insurer may give the commission a written submission
9 about the proposed financial penalty not later than—
- 10 (i) for a minor contravention—15 business days after the day
11 the insurer is given the notice; or
- 12 (ii) for a serious contravention—20 business days after the day
13 the insurer is given the notice; or
- 14 (iii) if the commission agrees to a longer period—the agreed
15 period.

16 **394D Imposing financial penalties**

- 17 (1) The MAI commission may impose a financial penalty on a licensed
18 insurer if the commission—
- 19 (a) has given the insurer a show cause notice; and
- 20 (b) has considered any written submission given by the insurer in
21 accordance with section 394C (1) (d); and
- 22 (c) has considered the matters prescribed by regulation; and
- 23 (d) is satisfied that—
- 24 (i) a ground for financial penalty exists in relation to the
25 insurer; and

- 1 (ii) the imposition of the financial penalty is—
- 2 (A) in the public interest; and
- 3 (B) appropriate taking into account the nature of the
- 4 contravention.
- 5 (2) A financial penalty must not be more than—
- 6 (a) for a minor contravention—\$20 000; or
- 7 (b) for a serious contravention—\$100 000.
- 8 (3) If the MAI commission imposes a financial penalty on a licensed
- 9 insurer, the commission must give the insurer a notice (a *financial*
- 10 *penalty notice*) stating—
- 11 (a) that the commission has decided to impose a financial penalty
- 12 on the insurer; and
- 13 (b) the amount of the financial penalty; and
- 14 (c) the grounds on which the penalty is being imposed; and
- 15 (d) that the notice is a financial penalty notice under this section;
- 16 and
- 17 (e) for a serious contravention—that the insurer may request a
- 18 mediation under section 394E if the insurer disagrees with the
- 19 financial penalty; and
- 20 (f) that the penalty must be paid to the MAI commission in
- 21 accordance with section 394F.
- 22 (4) In this section:
- 23 *show cause notice*—see section 394C (2).

1 **394E Mediation for serious contravention financial penalty**
2 **notice**

- 3 (1) If the MAI commission imposes a financial penalty on a licensed
4 insurer for a serious contravention, the insurer may make a written
5 request to the commission for the matter to be mediated.
- 6 (2) A request under subsection (2) must be made within 10 business days
7 after the day the insurer is given the financial penalty notice.
- 8 (3) A mediation under this section must be mediated by an accredited
9 mediator.
- 10 (4) The mediator must be—
- 11 (a) a person who is independent of the MAI commission and the
12 licensed insurer; and
- 13 (b) decided by agreement between the MAI commission and the
14 licensed insurer.
- 15 (5) The fees and expenses of the mediator must be paid—
- 16 (a) as agreed between the MAI commission and the licensed
17 insurer; or
- 18 (b) if there is no agreement—by each of them in equal proportions.
- 19 (6) After mediation, the MAI commission must give the mediator and the
20 licensed insurer a written notice that—
- 21 (a) if the commission and insurer reach an agreement—confirms,
22 varies or withdraws the financial penalty notice in accordance
23 with the agreement; or
- 24 (b) if no agreement is reached—confirms the financial penalty
25 notice.
- 26 (7) In this section:
- 27 ***accredited mediator***—see section 321 (6).

- 1 **394F Payment of financial penalty**
- 2 (1) This section applies if the MAI commission imposes a financial
3 penalty on a licensed insurer under section 394D (2).
- 4 (2) The licensed insurer must pay the financial penalty to the MAI
5 commission not later than 15 business days after the later of—
- 6 (a) if the insurer requests a mediation under section 394E—the day
7 the financial penalty is confirmed or varied under section 394E
8 (6); and
- 9 (b) in any other case—the day the financial penalty notice is given
10 to the insurer.
- 11 (3) A financial penalty may be recovered as a debt payable to the MAI
12 commission.
- 13 *Note* An amount owing under a law may be recovered as a debt in a court of
14 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

15 **Part 7.6B MAI insurer licences—directions**
16 **to licensed insurers**

- 17 **394G Directions to licensed insurers—general**
- 18 (1) This section applies if the MAI commission believes on reasonable
19 grounds that a licensed insurer is contravening, has contravened or is
20 likely to contravene—
- 21 (a) this Act; or
- 22 (b) a condition of the MAI insurer licence; or
- 23 (c) the insurance industry deed.
- 24 (2) The MAI commission may direct the licensed insurer to do 1 or more
25 of the following things:
- 26 (a) rectify the contravention or avoid the likely contravention
27 mentioned in subsection (1);

- 1 (b) comply with the Act, condition of the licence or insurance
2 industry deed.
- 3 (3) A direction must be in writing and include the following:
- 4 (a) details of the licensed insurer's contravention or likely
5 contravention;
- 6 (b) details of the thing required to be done or not done by the
7 licensed insurer;
- 8 (c) the day by which the licensed insurer must comply with the
9 direction;
- 10 (d) a statement that, under section 394H, the insurer may object to
11 the direction.
- 12 (4) The licensed insurer must comply with the direction by the later of—
- 13 (a) the day stated in the direction; and
- 14 (b) if a later day is agreed between the MAI commission and the
15 insurer—that day.

16 **394H Objection to direction**

- 17 (1) A licensed insurer may make a written objection to the MAI
18 commission about a direction given to the insurer under
19 section 394G.
- 20 (2) However, an objection may only be made on 1 or more of the
21 following grounds:
- 22 (a) the stated contravention did not happen or the stated likely
23 contravention is unlikely to happen;
- 24 (b) doing or not doing the stated thing would place an unreasonable
25 cost burden on the insurer;
- 26 (c) the stated time for compliance is either not reasonable or not
27 proportionate to the thing that must be done or not done.

- 1 (3) An objection does not operate to stay the direction or otherwise
2 prevent action being taken based on the direction.
- 3 (4) As soon as practicable after receiving an objection, the MAI
4 commission must review the direction and decide to—
- 5 (a) affirm the direction; or
6 (b) amend the direction; or
7 (c) set aside the direction and make a different direction; or
8 (d) withdraw the direction.
- 9 (5) After making a decision under subsection (4), the MAI commission
10 must give the licensed insurer a written notice that states—
- 11 (a) the commission’s decision; and
12 (b) the reasons for the decision; and
13 (c) if the decision is to amend the direction or set aside the direction
14 and substitute it for a different direction—the day the amended
15 or different direction takes effect.

16 **394I Directions to licensed insurers—remediation plans**

- 17 (1) The MAI commission may direct a licensed insurer to give the
18 commission a proposed remediation plan if the commission believes
19 on reasonable grounds that the insurer is contravening, has
20 contravened or is likely to contravene—
- 21 (a) this Act; or
22 (b) a condition of the MAI insurer licence; or
23 (c) the insurance industry deed.
- 24 (2) A direction must be in writing and include the following:
- 25 (a) details of the licensed insurer’s contravention or likely
26 contravention (the *identified contravention*);

- 1 (b) a statement that the licensed insurer must give the MAI
2 commission a proposed remediation plan;
- 3 (c) the day by which the licensed insurer must give the MAI
4 commission the proposed remediation plan.
- 5 (3) The licensed insurer must give the MAI commission the proposed
6 remediation plan by the later of—
- 7 (a) 15 business days after the day the direction is given to the
8 insurer; and
- 9 (b) if a later day is agreed between the MAI commission and the
10 insurer—that day.
- 11 (4) A licensed insurer must include the following details in a proposed
12 remediation plan:
- 13 (a) the nature and extent of—
- 14 (i) the identified contravention mentioned in the direction
15 given to the insurer; and
- 16 (ii) any other contravention or likely contravention (a *further*
17 *contravention*) that is the same as or similar to the
18 identified contravention mentioned in the direction; and
- 19 (b) any action the insurer has taken, or proposes to take, to
20 remediate the identified contravention and further
21 contravention;
- 22 (c) the insurer’s assessment of the risk of the further contravention
23 happening;
- 24 (d) any action the insurer has taken, or proposes to take, to remove
25 or minimise the risk of the further contravention happening;
- 26 (e) the timeframes for the insurer taking the actions mentioned in
27 paragraph (b) and (d).

- 1 (5) If a licensed insurer gives the MAI commission a proposed
2 remediation plan (including an amended proposed remediation plan),
3 the commission must—
- 4 (a) approve the proposed plan; or
5 (b) require the insurer to amend the proposed plan.
- 6 (6) However, the MAI commission must not approve a proposed
7 remediation plan unless the proposed plan—
- 8 (a) complies with subsection (4); and
9 (b) identifies appropriate actions and timeframes for responding to
10 the risks identified in the proposed plan.
- 11 (7) If the MAI commission approves a proposed remediation plan, the
12 commission must give the insurer a written notice stating—
- 13 (a) that the proposed plan has been approved; and
14 (b) that the insurer must comply with the approved remediation
15 plan.
- 16 (8) If the MAI commission requires the licensed insurer to amend a
17 proposed remediation plan, the commission must give the insurer a
18 written notice stating—
- 19 (a) what amendments the commission requires the insurer to make
20 to the proposed plan; and
21 (b) the day by which the insurer must submit the amended proposed
22 remediation plan.

80 New section 412A

insert

412A Notice of reportable conduct

- (1) If a licensed insurer becomes aware of reportable conduct in relation to the insurer, the insurer must give the MAI commission a written notice about the reportable conduct that includes—
- (a) the known details about the reportable conduct; and
 - (b) details about any action the licensed insurer has taken, or proposes to take to—
 - (i) investigate the nature and extent of the reportable conduct and any other conduct that is the same as or similar to the reportable conduct; and
 - (ii) remediate the reportable conduct and any other conduct identified as a result of an investigation mentioned in subparagraph (i); and
 - (iii) remove or mitigate the risk of the same or similar reportable conduct happening; and
 - (c) any other information required by the MAI guidelines.
- (2) The MAI guidelines may make provision in relation to the following:
- (a) what constitutes a significant contravention;
 - (b) information a licensed insurer must include in a notice given under subsection (1).
- (3) In this section:
- reportable conduct*** means conduct by a licensed insurer that causes, or is likely to cause, a significant contravention of—
- (a) this Act; or

- 1 (b) a condition of the MAI insurer licence; or
2 (c) the insurance industry deed.

3 **81 How MAI commission is to make request**
4 **Section 464 (3), definition of *certificate of correctness*,**
5 **new paragraph (d)**

6 *before the note, insert*

- 7 (d) an executive officer of the licensed insurer.

8 **82 Internally reviewable decisions**
9 **Schedule 1, part 1.1, new item 20A**

10 *insert*

20A	124A (1)	suspend payment of treatment and care benefits and income replacement benefits because injured person fails to comply with a recovery plan for the person
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11 **83 ACAT reviewable decisions**
12 **Schedule 1, part 1.2, new item 25A**

13 *insert*

25A	124A (1)	suspend payment of treatment and care benefits and income replacement benefits because injured person fails to comply with a recovery plan for the person
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14 **84 Dictionary, new definitions of *financial penalty notice* and**
15 ***ground for financial penalty***

16 *insert*

17 *financial penalty notice*, for part 7.6A (Financial penalties)—see
18 section 394D (3).

19 *ground for financial penalty*, for part 7.6A (Financial penalties)—
20 see section 394B.

- 1 **85 Dictionary, new definition of *independent assessor***
2 *insert*
3 *independent assessor*—see section 206.
- 4 **86 Dictionary, definition of *independent health assessor***
5 *omit*
- 6 **87 Dictionary, new definition of *minor contravention***
7 *insert*
8 *minor contravention*, for part 7.6A (Financial penalties)—see
9 section 394A.
- 10 **88 Dictionary, definition of *non-conviction order***
11 *omit*
- 12 **89 Dictionary, definition of *serious contravention***
13 *insert*
14 *serious contravention*, for part 7.6A (Financial penalties)—see
15 section 394A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 February 2023.

2 Notification

Notified under the [Legislation Act](#) on 2023.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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