

Australian Capital Territory

# Motor Accident Injuries (Industry Deed) Approval 2020

Disallowable instrument DI2020–4

made under the

**Motor Accident Injuries (Premiums and Administration) Regulation 2019, section 24 (What must be included in an insurance industry deed)**

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## 1 Name of instrument

This instrument is the *Motor Accident Injuries (Industry Deed) Approval 2020*.

## 2 Commencement

This instrument commences on the commencement of the *Motor Accident Injuries Act 2019*, section 3.

## 3 Approval

I approve the deed attached to this instrument as the required content for an Insurance Industry Deed.

## 4 Insurance Industry Deed

The Insurance Industry Deed provides for the matters mentioned in section 360, *Motor Accident Injuries Act 2019*.

Lisa Holmes  
MAI Commissioner  
MAI Commission  
10 January 2020

## Motor Accident Injuries Act 2019

### INDUSTRY DEED

THIS DEED is made the .... day of .....

Between:	THE AUSTRALIAN CAPITAL TERRITORY (the “Territory”), represented by the Motor Accident Injuries Commission of the first part;
AND:	AUSTRALIAN CAPITAL TERRITORY INSURANCE AUTHORITY a Corporation established pursuant to the <i>Insurance Authority Act 2005</i> (“ACTIA”) of the second part;
AND:	The insurers holding a MAI insurer licence pursuant to the <i>Motor Accident Injuries Act 2019</i> (the “MAI Insurers”) of the third part.

### RECITALS

- A. The *Motor Accident Injuries Act 2019* (“the Act”) is an act about motor accident injuries and insurance, establishing a hybrid no-fault common law motor accident injuries scheme, and for other purposes. With respect to insurer liabilities, it is a third-party insurance scheme.
- B. A corporation is eligible for a MAI insurer licence only if, among other things, it is a party to the Insurance Industry Deed. The Insurance Industry Deed is a Deed that is between the Territory, ACTIA and licensed insurers to regulate the conduct of MAI insurance business of licensed insurers and matters incidental to the conduct of MAI insurance business and the MAI insurance scheme. Section 360 of the Act provides that the Deed may include provisions for a number of matters set out in that section and that regulations may also prescribe what may or must be included in the Insurance Industry Deed and anything else about the content of the Insurance Industry Deed.
- C. Under section 24 of the *Motor Accident Injuries (Premiums and Administration) Regulation 2019*, the MAI Commission must approve the required content for the Insurance Industry Deed, this approval being a disallowable instrument.
- D. ACTIA is a statutory authority established pursuant to section 7 of the *Insurance Authority Act 2005* and is the nominal defendant pursuant to section 16 of the Act. Certain authorities and obligations are conferred on the nominal defendant in relation to personal injury caused by a motor accident involving an unidentified motor vehicle, uninsured motor vehicle, an unregistered vehicle permit. The nominal defendant is also obligated to manage applications where an interstate insurer is unable to respond because the other State/jurisdiction has an at-fault common law scheme.
- E. The MAI Insurers are corporations who were licensed insurers under part 5.2 of the *Road Transport (Third-Party Insurance) Act 2008* and are taken to be licensed insurers under the Act.
- F. The parties have agreed to the terms of the Insurance Industry Deed for the purposes of regulating the conduct of MAI insurance business (as defined by the Act)

and matters incidental to the conduct of the MAI insurance business and the MAI insurance scheme under the Act.

**NOW THIS DEED WITNESSES:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Dictionary**

Words defined in the dictionary of the Act, unless the contrary intention appears, apply to this Deed.

**1.2 Further Definitions**

In this Deed, unless the contrary intention appears, the following definitions apply:

“Act” means the *Motor Accident Injuries Act 2019*, and includes any regulation, instrument or determination made under the Act.

“ACTIA” means the Australian Capital Territory Insurance Authority in its capacity as the nominal defendant.

“accession deed” means the accession deed referred to in clause 2.

“application” means an application for defined benefits.

“business day” means a day that is not a Saturday or Sunday; or a public holiday or bank holiday in the ACT.

“claim”, where it is used on its own, means a *motor accident claim*.

“claim costs” means the amounts paid out by the insurer to or on behalf of an applicant or a claimant in relation to an application and / or claim or the costs (including disbursements and legal expenses) relating to the application and / or claim as the result of defined benefits, common law settlement or verdict (not the insurers general administration costs).

“claims handling costs” means the reasonable amount:

- (a) paid by the insurer to another person (other than a related body corporate of the insurer as determined under the Corporations Law or an employee of the insurer or that related body corporate); or
- (b) incurred by an insurer or a related body corporate which are permitted under the Sharing Agreement,

for the provision of medical, legal/accounting or investigative services in respect of an application and / or motor accident claim, including payments made in relation to recovery actions.

“Deed” means this Insurance Industry Deed as amended from time to time together with any accession deed executed in accordance with clause 2.

“defined benefits” means an application made under the Act for benefits for treatment and care, income replacement, quality of life and/or funeral and death benefits.

“insurer” of a motor vehicle means:

- (a) for an insured motor vehicle – the MAI insurer for the motor vehicle
- (b) for a motor vehicle insured by an interstate insurer – the interstate insurer

- (c) for an uninsured motor vehicle – the nominal defendant
- (d) for an unidentified motor vehicle – the nominal defendant.

“MAI Insurer” means a corporation licensed as a MAI insurer under the Act.

“new MAI insurer” means a corporation licensed as a MAI insurer under the Act after the commencement of the Act.

“motor accident claim”

- (a) means a claim for damages for personal injury caused by a motor accident; and
- (b) for a fatal injury, includes a claim by the dead person’s dependants or estate.

“sharing principles” means the process and / or agreement to share the cost of applications and claims under clause 4 of this Deed.

“suspended licensee” means a MAI insurer whose licence has been suspended pursuant to part 7.5 of the Act.

### **1.3 Interpretation**

Chapters 14 and 15 of the *Legislation Act 2001* (the Legislation Act) apply to the interpretation of this Deed. The following principles also apply to the extent that they are not inconsistent with the Legislation Act:

- (a) a reference to a clause shall be a reference to all of its subclauses, and a reference to a subclause shall be a reference to all its sub-subclauses unless the contrary intention appears;
- (b) headings and underlining are for reference only and have no effect on the construction, interpretation or meaning of the clauses;
- (c) the Schedules referred to in this Deed form part of and are subject to the terms of this Deed;
- (d) where the last day of any period prescribed or allowed by this Deed for the doing of anything falls on a day that is not a business day, the thing may be done on the first business day following that day;
- (e) all sums of money and all payments made under this Deed shall be in Australian dollars.

### **1.4 Operative date**

- (1) This Deed shall commence:
  - a. for a MAI Insurer on 1 February 2020; and
  - b. for a new MAI insurer, the date on which its MAI insurer licence commences under the *Motor Accident Injuries Act 2019* is the date the Deed applies.
- (2) The Insurance Industry Deed signed on 28 October 2016 for the purposes of the *Road Transport (Third-Party Insurance) Act 2008* continues to apply to accidents that occur prior to 1 February 2020.

## **1.5 Ceasing to be a Party – MAI insurers**

A MAI Insurer shall cease to be a party to this Deed on the date the MAI Insurer licence is cancelled under the Act by the MAI Commission or otherwise cancelled under the Act, so long as any liability under this Deed has been discharged or transferred to another insurer.

## **2. ACCESSION**

### **2.1 Execution of Deed of Accession**

- (1) A corporation intending to become a new MAI Insurer and not already a party to this Deed, may become a party to this Deed by executing an accession deed in the form of Schedule 2 or in such other form as the parties may approve.
- (2) An executed accession deed is an instrument that the MAI Commission is to publish on its website.

### **2.2 Date of accession**

An accession deed operates from the date of which the corporation that executed the accession deed becomes a new MAI insurer.

### **2.3 No other consent necessary**

The consent or agreement of any other party is not required for a corporation executing an accession deed to become a party to this Deed.

## **3. ADMINISTRATION AND BUSINESS PROCESSES**

Insurers should adopt and follow administration and business processes with the intent of removing wasteful disputation and litigation from the management of applications for defined benefits and claims. The co-operation of insurers is integral to good outcomes being achieved.

Sound business processes and administration processes should be adopted. Where this Deed provides for business and/or administration processes, these should be followed.

## **4. SHARING PRINCIPLES**

### **4.1 Interpretation**

In this clause, unless the contrary intention appears:

“collision” in relation to a motor accident means the physical contact of:

- (i) one motor vehicle with another or other motor vehicles;
- (ii) a person or thing in or on one motor vehicle with another motor vehicle or other motor vehicles;
- (iii) a person or thing in or on one motor vehicle with the passengers or goods in or on another motor vehicle or other motor vehicles;
- (iv) one motor vehicle and another motor vehicle or other motor vehicles and a pedestrian or cyclist;

- (v) a pedestrian or cyclist with one motor vehicle or other motor vehicles notwithstanding that there has been no contact between the motor vehicles; or
- (vi) a motor vehicle or other motor vehicles with a vehicle being towed, attached to or carried by a motor vehicle;

and, includes consecutive contacts between the same where collisions, although not contemporaneous, are so closely related in time as to constitute one event or occurrence;

“motor vehicle” means a vehicle built to be propelled by a motor that forms part of the vehicle, and includes a motor vehicle built to be used on light rail<sup>1</sup> but excludes personal mobility devices.

#### **4.2 Relevant insurer**

- (1) If an application has been given to an insurer that is not the MAI Insurer for the vehicle most at fault, the transfer of the application is to be done in accordance with Division 2.3.5, Transfer of application to another insurer, of the Act. The insurers must cooperate so that the necessary information is exchanged and the applicants’ treatment and care to assist recovery are not adversely affected while the second insurer decides liability for the application (see section 70(3)(b)(i) to (iii) of the Act).
- (2) If, on giving a transfer application to another insurer, the second insurer disputes its liability under section 70 of the Act, the dispute should be referred to a person who decides disputes as provided for by the Sharing Agreement’s dispute resolution procedure, after complying with the notice provisions (to the applicant and the MAI Commission) in the Act. Immediately following the resolution of the dispute, the first and second insurers have obligations under the Act to inform the applicant, including information on the transfer.
- (3) For a multiple vehicle accident that is a no-fault motor accident within the meaning of section 254 of the Act, the relevant insurer is the MAI insurer of the vehicle whose act or omission appears to have caused the accident.

#### **4.3 Cost sharing**

- (1) MAI Insurers who have a liability, including potential liability, must share in the costs of an application for defined benefit or for a claim where 2 or more motor vehicles were involved in a collision resulting in a motor accident, to be decided by or in accordance with the Sharing Agreement.
- (2) Sharing by ACTIA is limited to vehicles that are subject to an unregistered vehicle permit and/or an uninsured motor vehicle and to the extent of the liability prescribed under section 324 and 326 of the Act. Costs are not shared by ACTIA for unidentified motor vehicles (section 328). ACTIA may share costs, but is not required to, where it is authorised as an agent for an interstate relevant insurer.

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<sup>1</sup> A light rail vehicle is included as it is a motor vehicle, and therefore covered by the MAI Act. Note, the definition of motor vehicle is in the *Road Transport (General) Act 1999*.

#### **4.4 Dispute about whether a motor vehicle was involved in a collision**

- (1) Where an application has been made and there is a dispute in relation to whether an insurer is liable or potentially liable for the collision, the insurer(s) should make reasonable efforts to resolve the dispute. If the dispute is not resolved within six weeks, the dispute must be referred by the disputing insurer to a person who decides disputes (as provided for by the Sharing Agreement's dispute resolution procedure).
- (2) Referral of a dispute should be notified in writing by the disputing insurer to the MAI Commission. Until the dispute is resolved, the disputing insurer must continue to manage the application(s) made in relation to the motor accident and ensure the applicants' treatment and care to assist recovery are not adversely affected.

#### **4.5 Conduct of a claim**

- (1) This clause applies where a claim manager is to be decided for multiple respondents under section 56, *Civil Law (Wrongs) Act 2002*.
- (2) Questions about which insurer is to be the claim manager are to be resolved as soon as practicable after notice of a claim is given that is a complying notice of claim.
- (3) If the question about which insurer is to be the claim manager has not been resolved by agreement, the insurer of the motor vehicle that principally caused the collision shall be the claim manager.
- (4) The claim manager is authorised to, as it sees fit:
  - (a) settle and compromise the claim;
  - (b) seek contribution or take recovery action for costs on behalf of itself and each other insurer; and
  - (c) otherwise deal with the claim or series of claims.

#### **4.6 Method of sharing costs**

- (1) Insurers required to share the costs of an application or claim are to agree the basis on which costs are to be shared between them.
- (2) If the basis on which costs are to be shared is not agreed under subclause (1) within two months of each insurers' liability being determined by the insurer, the costs are to be shared between the licensed insurers in the same proportion that the number of motor vehicles insured by each insurer bears to the total number of vehicles involved in the collision / accident.

#### **4.7 Insurers to co-operate**

- (1) Each of the insurers must co-operate in the handling of all applications and settlement of all claims to which this Deed applies and must provide to any other insurer, who is or is likely to share the costs, reasonable information in respect of the application/claim.
- (2) The duty to co-operate extends to providing reasonable information to a person who decides a dispute under the Sharing Agreement's dispute resolution procedure.

#### 4.8 Sharing agreement

- (1) The insurers must make a Sharing Agreement (and may vary it at any time) to give effect to the administration of the Sharing Principles and the Agreement may provide for but is not limited to:
  - (a) the means by which insurers are to agree on the basis on which claim costs are to be shared between them;
  - (b) deemed sharing arrangements for certain vehicles;
  - (c) the proportion (if any) and means by which insurers will share claims handling costs;
  - (d) who decides a dispute for this clause or any other clause of the Deed;
  - (e) the means of determining which insurer will manage an application or a claim where it is unclear who is the relevant insurer;
  - (f) the procedure involved with applying for, responding to and reconciling sharing of applications and claims;
  - (g) monetary or other limitations or exclusions to sharing;
  - (h) sharing recoveries; and
  - (i) reporting requirements between insurers.
- (2) The Sharing Agreement remains in effect while this Deed remains in existence (including any variations).

#### *Dispute Resolution*

- (3) The appointment, process, functions, determinations and costs of a person who decides a dispute is to be provided for in the Sharing Agreement. The types of dispute resolution may be a referee, mediation, conciliation or an arbitration. As such, the person who decides a dispute can be one of the following:
  - (a) referee
  - (b) mediator
  - (c) conciliator
  - (d) arbitrator.

The Sharing Agreement may provide for the credentials required to be held by the person.

- (4) If the Sharing Agreement does not deal with the type of dispute resolution for the dispute, the default is for a referee to consider the dispute. A referee is a person or one of the persons selected from a panel approved by the insurers who may determine a dispute under this clause.
- (5) A dispute should be determined by the referee, conciliator, and arbitrator (the 'person') expeditiously and with as little formality as possible. After considering the dispute, the person may give a direction to the parties to the dispute and that direction shall be final and binding upon all parties to the dispute. For a mediation,



the parties are to come to a mutually acceptable conclusion expeditiously and with as little formality as possible.

- (6) The Sharing Agreement may also provide for the survival of the dispute resolution provisions in the event a MAI Insurer ceases to be licensed under the MAI Act, and therefore no longer a party to the Deed.

*Copy to be provided to the MAI Commission*

- (7) The Sharing Agreement (and any variations made) must be provided to the MAI Commission

## **5 OTHER OBLIGATIONS OF INSURERS**

### **5.1 Exchange of information**

- (1) An insurer shall provide to any other insurer, on request, any reasonable information in respect of an application or a claim in which the insurers have a mutual interest or where the applicants/claimants are in any way related to each other or other parties involved in the application/motor accident claim.
- (2) Reasonable information includes information reasonably required for the purpose of assessing or payment of an application or claim.

## **6 AGREEMENT BY INSURERS**

### **6.1 Approval requirements**

In relation to any matter requiring the consent, agreement or approval of all MAI insurers under the Act or this Deed, then if 75% of those MAI insurers representing at least 65% of the market share of all MAI insurers so agree, then all MAI insurers, as the case may be, shall be deemed to have given their consent, agreement or approval.

### **6.2 Method of obtaining approval**

Consent, agreement or approval under subclause 6.1 may be evidenced by a document or a series of documents setting out the matter consented to, agreed or approved by the required majority of MAI insurers.

### **6.3 MAI insurers may appoint agent**

For the purpose of entering into or negotiating any agreement supplementary to this Deed or relating to the third party business of MAI insurers or for any other matter, the MAI insurers may, pursuant to this clause, appoint a person or persons as the agent or representative of all the MAI insurers for that purpose.

### **6.4 Other agreements**

If the insurers agree in writing on any matter relating to the operation of this Deed or the Act in accordance with subclause 6.1, then all insurers as the case may be shall be deemed to have given their agreement to that matter.

## **7. APPLICABLE LAW**

This deed shall be governed by and construed in accordance with the law of the time being in force in the Australian Capital Territory and the parties agree to submit to the non-exclusive jurisdiction of the Courts of the Territory.

## **8. NOTICES**

### **8.1 Address for delivery of notices**

Any notice, approval, request, consent or other communication given or made to a party under this Deed must be in writing and delivered in person or sent by post or email to the party at the following address or email address:

in the case of the MAI Commission:

Address: 1 Constitution Ave, Canberra ACT 2601  
GPO Box 158, CANBERRA CITY ACT 2601

Email: ]

in the case of the ACT Insurance Authority in its capacity as Nominal Defendant

Address: 1 Constitution Ave, Canberra ACT 2601  
GPO Box 158, CANBERRA CITY ACT 2601

Email:

in the case of the MAI Insurers:

at the address or email address set forth in Schedule 1 or in the accession deed executed by the particular MAI Insurer;

or such other address or email address as a party from time to time may notify to the other parties for the purpose of this clause.

### **8.2 Deemed delivery of notices**

Any notice, approval, request, consent or other communication given or made pursuant to this Deed shall be deemed to be duly given or made:

- (a) in the case of delivery in person, when delivered to the recipient at the nominated address;
- (b) in the case of delivery by priority post, within two business days from the day of posting. If not sent by priority post, six business days from the day of posting; or
- (c) in the case of email, on the day the email is sent.

If delivery or receipt is later than 5.30 p.m. (local time) on a business day it shall be deemed to have been duly given at the commencement of business on the next business day.

*Priority post* is a reference to any means provided by Australia Post to facilitate faster delivery, including a priority label or Express Post.

## **9. WAIVER**

### **9.1 Delay in exercise of rights**

No delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default by any other party under this Deed shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default thereafter occurring nor shall any waiver of any single breach or default be deemed to be a waiver of any other breach or default.

### **9.2 Waivers**

Any waiver agreement, consent or approval of any kind or character on the part of any party of any breach or default by any other party or any waiver on the part of any party of any provisional condition of the Deed must be in writing and shall be effective only to the extent specifically set forth in such writing.

### **9.3 Remedies cumulative**

All remedies available to the parties under this Deed shall be cumulative.

## **10. ENTIRE AGREEMENT**

The terms and conditions of this Deed together with any written amendments which are confirmed by the parties as amendments to this Deed shall constitute the complete Deed between the parties and it is expressly agreed and declared that no further or other covenants or provisions in respect of this Deed or otherwise shall be deemed to be implied in this Deed or to exist between the parties by way of collateral or other deed by reason of any promise, representation, warranty or undertaking given or made by any party to another party on or prior to the execution of this Deed and the existence of any such implicational collateral or other agreement is hereby negated.

## **11. AMENDMENTS OR VARIATION**

No amendment or variation of this Deed by any other party shall be of any force or effect unless the amendment or variation is conferred in writing and signed by all parties.

## **12. ASSIGNMENT**

The Deed may not be assigned in whole or in part by any party without the prior written consent of all other parties.

## **13. COSTS**

The parties shall each bear their own legal and other costs incidental to the preparation, execution and implementation of this Deed.

**IN WITNESS WHEREOF the Parties have executed this DEED this day**

**SIGNED** by \_\_\_\_\_ )

for and on behalf of the **MAI Commission** in the ) \_\_\_\_\_

presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Full name of witness (BLOCK LETTERS)

**SIGNED** by \_\_\_\_\_ )

for and on behalf of the ACT Insurance Authority  
in its capacity as **Nominal Defendant** )

in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Full name of witness (BLOCK LETTERS)

**SIGNED** by \_\_\_\_\_ )

for and on behalf of AAI Limited )) \_\_\_\_\_

in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Full name of witness (BLOCK LETTERS)

**SIGNED** by \_\_\_\_\_ )

for and on behalf of Insurance Australia Limited ) \_\_\_\_\_

in the presence of: )

\_\_\_\_\_  
Signature of witness Date:

\_\_\_\_\_  
Full name of witness (BLOCK LETTERS)

**Schedule 1**

Name of MAI Insurer	Address	Email
1.		
2.		
3.		
4.		

