

Queensland



# **MOTOR ACCIDENT INSURANCE ACT 1994**

**Reprinted as in force on 20 February 1997  
(includes amendments up to Act No. 54 of 1996)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 1B**

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# Information about this reprint

This Act is reprinted as at 20 February 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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**MOTOR ACCIDENT INSURANCE ACT  
1994**

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# **MOTOR ACCIDENT INSURANCE ACT 1994**

[as amended by all amendments that commenced on or before 20 February 1997]

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

## **PART 1—PRELIMINARY**

### **Short title**

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

### **Commencement**

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

### **Objects**

3. The objects of this Act are—
  - (a) to continue and improve the system of compulsory third-party motor vehicle insurance, and the scheme of statutory insurance for uninsured and unidentified vehicles, operating in Queensland; and
  - (b) to provide for the licensing and supervision of insurers providing insurance under policies of compulsory third-party motor vehicle insurance; and
  - (c) to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents; and
  - (d) to promote and encourage, as far as practicable, the rehabilitation

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of claimants who sustain personal injury because of motor vehicle accidents; and

- (e) to establish and keep a register of motor vehicle accident claims to help the administration of the statutory insurance scheme and the detection of fraud; and
- (f) to promote measures directed at eliminating or reducing causes of motor vehicle accidents and mitigating their results.

**Definitions**

**4.** In this Act—

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

**“claim”** means motor vehicle accident claim.

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

**“Commission”** means the Motor Accident Insurance Commission.

**“Commissioner”** means the Insurance Commissioner.

**“costs”** of an insurer on a claim includes—

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

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

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

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with jurisdiction to hear the claim.

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

“**CTP insurance policy**” means—

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

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

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

- (a) the conduct of the business; or
- (b) the statutory insurance scheme.<sup>1</sup>

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

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

“**insured person**” means—

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

“**licence**” means a licence under Part 5 (Licensed insurers).

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<sup>1</sup> For a statement of the subjects that may be covered by the industry deed, see section 65 (Industry deed).

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

**“mobile machinery or equipment”** has the meaning given by the *Transport Infrastructure (Roads) Regulation 1991*.

**“motor vehicle”** means a vehicle for which registration is required under the *Transport Infrastructure (Roads) Regulation 1991* or the *Motor Vehicles Control Act 1975*, and includes a trailer.

**“motor vehicle accident”** means an incident in which personal injury is caused by, through or in connection with a motor vehicle.

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

**“officer”** has the same meaning as in the Corporations Law.

**“personal injury”** includes—

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

**“public place”** see the *Motor Vehicles Control Act 1975*, section 4.2

**“registration”** of a motor vehicle includes a permit or plate under the

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<sup>2</sup> *Motor Vehicles Control Act 1975*, section 4—

**“public place”** means a place of public resort open to or used by the public as of right, and a place for the time being used for a public purpose or open to access by the public, whether on payment or otherwise, or open to access by the public by the express or tacit consent or sufferance of the owner of that place, whether the place is or is not so open at all times, and a place for the time being declared by regulation to be a public place for the purposes of this Act, but does not include—

- (a) a track which at the material time is being used as a course for racing or testing motor vehicles and from which other traffic is excluded during that use; or
- (b) a place that is a road within the meaning of the *Transport Infrastructure (Roads) Act 1991* or the *Traffic Act 1949*; or
- (c) a place that is declared under section 25 not to be a public place.

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*Transport Infrastructure (Roads) Regulation 1991* permitting a motor vehicle to be used on a road without registration.

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

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

**“related body corporate”**, for an insurer, has the meaning given by the Corporations Law.

**“road”** means—

- (a) any surveyed or unsurveyed land dedicated to public use, according to law, as a road (including a footpath or median strip); or
- (b) a toll road; or
- (c) a bridge, culvert, ford or detour open to public access and used as a road; or
- (d) a ferry used to carry motor vehicles; or
- (e) a public car park or parking station.

**“self-insurer”** means—

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

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

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

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

**“transport administration”** means—

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

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

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

### **Application of this Act**

**5.(1)** This Act applies to personal injury caused by, through or in connection with a motor vehicle if, and only if, the injury—

- (a) is a result of—
  - (i) the driving of the motor vehicle; or
  - (ii) a collision, or action taken to avoid a collision, with the motor vehicle; or
  - (iii) the motor vehicle running out of control; or
  - (iv) a defect in the motor vehicle causing loss of control of the vehicle while it is being driven; and
- (b) is caused, wholly or partly, by a wrongful act or omission in respect of the motor vehicle by a person other than the injured person.

**(2)** For an uninsured motor vehicle, subsection (1) applies only if the motor vehicle accident out of which the personal injury arises happens on a road or in a public place.

**(3)** However, this Act does not apply to personal injury caused by, through or in connection with—

- (a) a backhoe, bulldozer, end-loader, forklift, industrial crane or hoist,

or other mobile machinery or equipment; or

- (b) an agricultural implement; or
- (c) a motor vehicle adapted to run on rail or tram tracks; or
- (d) an amphibious vehicle; or
- (e) a motor vehicle of a class prescribed by regulation;

unless the motor vehicle accident out of which the injury arises happens on a road.

## **PART 2—MOTOR ACCIDENT INSURANCE COMMISSION**

### *Division 1—Establishment of the Commission*

#### **Establishment of Commission**

**6.** The Motor Accident Insurance Commission is established.

#### **Constitution of the Commission**

**7.(1)** The Insurance Commissioner, in the Commissioner's official capacity (but not in the capacity of Nominal Defendant), constitutes the Commission.

**(2)** The Insurance Commissioner is to be employed under the *Public Service Act 1996*.

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

**8.(1)** The Commission—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued under the name Motor Accident Insurance

Commission.

(2) The Commission has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) employ staff (including temporary staff); and
- (d) appoint agents and attorneys; and
- (e) engage consultants; and
- (f) fix charges, and other terms, for the provision of services by the Commission.

(3) The Commission's seal is to be kept as directed by the Commissioner and may be used only as directed or authorised by the Commissioner.

(4) Judicial notice must be taken of the imprint of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

### **Power of delegation**

9. The Commission may delegate its powers under this Act.

### *Division 2—General functions of Commission*

### **Commission's functions**

10.(1) The Commission's functions are to—

- (a) supervise insurers operating under the statutory insurance scheme and issue, suspend or withdraw licences for insurers operating under the scheme; and
- (b) establish and revise prudential standards with which licensed insurers must comply; and
- (c) monitor the management of claims by insurers under the statutory insurance scheme and, in particular, the insurers'

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- compliance with their obligations under Part 4 (Claims); and
- (d) recommend the premiums payable for CTP insurance policies under this Act, the levies payable on the premiums, and the administration fee; and
  - (e) monitor the availability, adequacy and use of rehabilitation services for claimants who suffer personal injury in motor vehicle accidents and develop programs, resources and guidelines to overcome deficiencies in the services; and
  - (f) fund, or help in other ways, the provision of rehabilitation services for claimants injured in motor vehicle accidents; and
  - (g) provide funds for research and education in the field of rehabilitation and the provision of rehabilitation services; and
  - (h) provide funds for research into the causes of motor vehicle accidents and their prevention; and
  - (i) carry out, or contribute to, advertising campaigns to increase public awareness of the causes of motor vehicle accidents, and of the economic, social and personal cost of motor vehicle accidents; and
  - (j) promote and, if funds are available, make financial contributions towards—
    - (i) the regular inspection of motor vehicles to ensure safety and roadworthiness; and
    - (ii) the training of drivers (including the provision of defensive driving courses); and
    - (iii) training in first aid; and
    - (iv) the provision, maintenance and support of the infrastructure necessary to reduce the incidence of motor vehicle accidents and minimise the results; and
  - (k) monitor the costs of insurers on claims; and
  - (l) develop and coordinate strategies to identify and combat fraud in or related to motor vehicle accident claims; and
  - (m) keep the industry deed under review and make recommendations for its amendment; and

(n) keep the statutory insurance scheme generally under review and make recommendations for its amendment.

(2) In determining prudential standards for licensed insurers, the Commission must have proper regard to the prudential standards that apply to the insurance industry under Commonwealth legislation.

### **Advisory Committee**

**11.(1)** The Commission may establish an advisory committee to advise on the exercise of the Commission's statutory functions.

(2) The matters on which the Advisory Committee may provide advice are to be decided by the Commission with the approval of the Minister.

(3) The advisory committee is to consist of persons appointed by the Minister on the Commission's nomination.

(4) The terms on which members of the advisory committee hold office are to be decided by the Minister.

### ***Division 3—Recommendation and fixing of insurance premiums, levies and administration fee***

#### **Premiums, levies and administration fee**

**12.(1)** The Commission must, at least 2 months before the beginning of each financial year, make recommendations to the Minister on—

(a) the rate for the financial year of—

(i) the statutory insurance scheme levy; and

(ii) the hospital and emergency services levy; and

(iii) the Nominal Defendant levy; and

(iv) the administration fee; and

(b) the amount of the premiums to be paid for CTP insurance policies for the financial year.

(2) Before recommending the levies, administration fee and premiums—

(a) the Commission must invite written submissions on the subject

from licensed insurers and organisations representing motorists in Queensland, and must consider any submissions made in response to the invitation; and

- (b) the Commission must obtain and consider actuarial advice.

### **Principles governing levies**

**13.(1)** The basis of the levies is as follows—

- (a) the statutory insurance scheme levy must cover—
  - (i) the estimated costs of the administration of this Act for the financial year (including all spending by the Commissioner in the exercise of statutory powers, but not costs associated with the Nominal Defendant scheme); and
  - (ii) any shortfall because the statutory insurance scheme levy was not enough to cover the costs in previous financial years;
- (b) the hospital and emergency services levy must cover a fair proportion of the estimated cost of providing public hospital services and public emergency services, having regard to the burden placed on the services by motor vehicle accidents;
- (c) the Nominal Defendant levy must cover—
  - (i) the estimated costs of the Nominal Defendant scheme for the financial year (including the cost of making appropriate provision for future costs); and
  - (ii) a shortfall because the Nominal Defendant levy was not enough to cover the costs of the Nominal Defendant scheme in previous financial years.

**(2)** The levies are to be percentages of gross premiums.

### **Principles governing insurance premiums**

**14.(1)** In recommending insurance premiums for a financial year, the Commission must have regard to—

- (a) the proportions of the premiums to be paid by way of levies and

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administration fee under this Act; and

- (b) the likely extent of licensed insurers' liabilities; and
- (c) any other matters the Commission considers relevant.

(2) The recommended insurance premiums may differ according to—

- (a) the period of registration; and
- (b) the nature or class of the motor vehicle; and
- (c) any other factor the Commission considers relevant.

(3) If the Nominal Defendant levy is increased to cover liabilities of the Nominal Defendant as the insurer of last resort on the insolvency of some other insurer formerly taking part in the CTP insurance scheme, there must be a corresponding increase in gross insurance premiums to cover the component of the Nominal Defendant levy referable to the liabilities.

**Fixing of premiums, levies and administration fee**

15.(1) The insurance premiums, levies and administration fee are to be fixed by regulation.

(2) The regulation should, if practicable, be made at least 2 months before the beginning of the financial year to which the premiums, levies and administration fee relate.

(3) If the regulation is not made at least 2 months before the beginning of the financial year to which the premiums, levies and administration fee relate, the regulation commences 2 months after it is notified in the Gazette, and the operation of the regulation fixing premiums, levies and administration fee for the previous financial year is extended until the later regulation commences.

(4) Within 3 sitting days after the regulation is tabled in the Legislative Assembly, the Minister must table in the Legislative Assembly—

- (a) the Commission's recommendations; and
- (b) if the insurance premiums, levies or administration fee differ from the Commission's recommendation—a report setting out in detail the reasons for the difference.

***Division 4—The Nominal Defendant*****The Nominal Defendant**

**16.(1)** The Nominal Defendant—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued under the name Nominal Defendant.

**(2)** The Commissioner is the Nominal Defendant.

**(3)** The Nominal Defendant has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) employ staff (including temporary staff); and
- (d) appoint agents and attorneys; and
- (e) engage consultants.

**(4)** The Nominal Defendant may delegate powers under this Act.

**(5)** The Nominal Defendant's seal is to be kept as directed by the Commissioner and may be used only as directed or authorised by the Commissioner.

**(6)** Judicial notice must be taken of the imprint of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

**Nominal Defendant to keep public office**

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

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

**Nominal Defendant taken to be licensed insurer**

**18.** The Nominal Defendant is taken to be a licensed insurer (other than for Parts 3 (Compulsory insurance) and 5 (Licensed insurers)) and is bound by the industry deed.

***Division 5—Annual report*****Annual report**

**19.(1)** The Commission must report annually under the *Financial Administration and Audit Act 1977*.

**(2)** The report must—

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

**PART 3—COMPULSORY INSURANCE*****Division 1—Obligation to insure*****Offence of driving uninsured vehicle etc.**

**20.(1)** A person must not drive an uninsured motor vehicle on a road or

in a public place.

Maximum penalty—80 penalty units.

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

Maximum penalty—80 penalty units.

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

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

### *Division 2—Selection of insurer*

#### **Selection of insurer**

**21.(1)** On lodging an application for the registration of a motor vehicle with transport administration, the applicant must select a licensed insurer to be the insurer under the CTP insurance policy for the vehicle by exercising 1 of the following options—

- (a) the applicant may lodge with the application a notice of nomination, in a form approved by transport administration, nominating a particular licensed insurer to be the insurer under the CTP insurance policy for the vehicle and pay, in full, to transport administration the appropriate insurance premium;
- (b) the applicant may lodge with the application a certificate in a form approved by the Commission certifying that the appropriate insurance premium has been paid, in full, to the licensed insurer on whose behalf the certificate is issued.

(2) On lodging an application for renewal of the registration of a motor vehicle with transport administration, the applicant must exercise 1 of the following options—

- (a) if a licensed insurer insured the vehicle under this Act or the former Act for the previous period of registration and the insurer is, or remains, a licensed insurer—the applicant may re-select the

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insurer for the period of renewed registration by paying, in full, to transport administration the appropriate insurance premium, either without lodging a further notice of nomination or with a further notice of nomination, in a form approved by transport administration, renominating the insurer;

- (b) the applicant may select a different licensed insurer to be the insurer under the CTP insurance policy for the period for which registration is to be renewed by—
  - (i) lodging with the application payment, in full, to transport administration of the appropriate insurance premium together with a notice of nomination, in a form approved by transport administration, nominating a different licensed insurer to be the insurer under the CTP insurance policy for the vehicle; or
  - (ii) lodging with the application a certificate in a form approved by the Commission certifying that the appropriate insurance premium has been paid, in full, to the licensed insurer on whose behalf the certificate is issued.

**(3)** However, an applicant for the renewal of the registration of a motor vehicle may only select a different insurer for the period of renewed registration if—

- (a) the application for renewal of registration, the notice of nomination or insurance certificate, and all required payments, are lodged before the end of the previous period of registration with—
  - (i) transport administration; or
  - (ii) an agency of transport administration designated in the instructions for lodgment contained on the application form; or
- (b) the insurer previously selected has ceased to be a licensed insurer.

**(4)** Transport administration must pay to each licensed insurer, at periodic intervals fixed by regulation, the premiums collected by transport administration for CTP insurance policies for which the licensed insurer has been selected in the previous period, to be the insurer under this section.

**(5)** Transport administration may keep an administration fee fixed by

regulation out of insurance premiums collected by transport administration.

(6) In this section—

**“appropriate insurance premium”** means the insurance premium, fixed by regulation, appropriate to a motor vehicle of the relevant class and the period of registration to which the relevant application relates.

### **Licensed insurer cannot decline CTP business**

**22.(1)** A CTP insurance policy under this Act is binding on the licensed insurer by force of this Act, and a licensed insurer cannot repudiate, or decline to issue or renew, a CTP insurance policy.

(2) If an application is made to a licensed insurer for an insurance certificate for use in connection with an application to register or renew the registration of a motor vehicle, and the appropriate insurance premium is tendered to the insurer by the applicant, the insurer must issue the certificate.

Maximum penalty—300 penalty units.

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

### **Statutory policy of insurance**

**23.(1)** When transport administration registers or renews the registration of a motor vehicle—

- (a) a policy of insurance in terms of the Schedule comes into force for the motor vehicle when the registration or renewal of registration takes effect; and
- (b) the licensed insurer selected under this Part in or in relation to the relevant application is the insurer under the policy.

(2) The policy remains in force for the period of registration and for a further period of grace ending—

- (a) on the renewal of the registration or the grant of a permit allowing the vehicle to be driven on roads while unregistered; or
- (b) on the expiry of 30 days from the end of the period of registration;

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whichever happens first, but the period of grace does not include a period over which the vehicle has attached to it plates that allow it to be driven on roads while unregistered.

(3) However, if the registration is cancelled before the end of the period for which it was granted or renewed, the policy ceases to be in force when the cancellation takes effect.

(4) The validity of the policy is unaffected by—

- (a) transport administration's failure to collect the insurance premium in full; or
- (b) another error of transport administration or an error of an insurer.

(5) If a CTP insurance policy comes into force under this Act and the insurance premium has not been collected, in full, by or for the insurer, the insurer may recover the premium, or as much of it as has not been paid, as a debt, from the person in whose name the motor vehicle is registered.

(6) If—

- (a) a cheque received by transport administration for the premium, or for an amount including the premium, on a CTP insurance policy is not paid on first presentation; or
- (b) transport administration becomes aware that, because of administrative error, the amount accepted by it as the premium on a CTP insurance policy is not the full amount of the premium;

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

(7) If provision is made by regulation for the gratuitous insurance of vehicles of a particular class under policies of CTP insurance, a vehicle of the relevant class must be regarded, subject to any conditions and limitations prescribed by regulation, as insured by a CTP insurance policy under which the Nominal Defendant is the insurer.

(8) If a licensed insurer issues a CTP insurance certificate for an uninsured motor vehicle, the motor vehicle is covered by the insurer under a CTP insurance policy while the vehicle is being driven as far as is reasonably necessary—

- (a) to obtain a certificate of roadworthiness, or a weighbridge

certificate, necessary for the vehicle's registration; or

- (b) to take the vehicle to the nearest convenient place for an inspection that is necessary for registration.

(9) However, CTP insurance cover under subsection (8) does not extend to an unregistered vehicle while it is being driven to a place to arrange or undergo repair or another purpose not specifically authorised by the subsection.

### **Transfer of registration**

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

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

25.(1) An applicant for registration, or renewal of registration, of a motor vehicle must not make a misstatement or misrepresentation that results in—

- (a) the motor vehicle being incorrectly classified; and
- (b) a consequent reduction in the amount of the premium charged for the CTP insurance policy for the vehicle.

Maximum penalty—20 penalty units.

(2) However, it is a defence to a charge of an offence against subsection (1) to prove that the defendant believed on reasonable grounds that the misstatement or misrepresentation was true.

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

Maximum penalty—300 penalty units.

### **Non-application in certain cases**

26. This Division does not apply to—

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

(Cwlth); or

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

### *Division 3—Financial obligations of insurers*

#### **Payment of levies and administration fee**

**27.(1)** At periodic intervals fixed by regulation, an insurer must—

- (a) give the Commission a return, containing the information prescribed by regulation, of the insurer's income by way of CTP insurance premiums for the previous period; and
- (b) pay to the Commission the appropriate amount payable by way of levies on the CTP insurance premiums; and
- (c) pay to transport administration the amount payable by way of administration fee.

Maximum penalty—150 penalty units.

**(2)** If an insurer fails to make a payment to the Commission or transport administration when required under this section, the Commission or transport administration may recover the amount as a debt, together with interest at a rate fixed by regulation.

### *Division 4—The statutory funds*

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

**28.(1)** There is to be a fund called the Motor Accident Insurance Fund.

**(2)** The fund consists of—

- (a) any amount transferred to the fund under section 106 (Nominal Defendant); and
- (b) the amounts received or recovered by the Commission by way of the statutory insurance scheme levy under this Act; and
- (c) the amounts received or recovered by the Commission by way of the hospital and emergency services levy under this Act; and

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- (d) any penalties or penalty interest imposed under this Act; and
- (e) income derived from the investment of the fund.

(3) The fund is to be applied to meet the cost of administering this Act, including—

- (a) all expenditure by the Commission in the exercise of statutory powers and functions (including payments to be made under section 106(4) but not costs otherwise associated with the Nominal Defendant scheme); and
- (b) interest on advances by the Treasurer under this section.

(4) The amounts received into the fund by way of the hospital and emergency services levy are to be applied towards providing public hospital services and public emergency services and, for that purpose, are to be paid to relevant departments.

(5) The Treasurer may decide at which periodic intervals, and in what proportions, the amounts are to be paid.

(6) The Treasurer may advance amounts to the fund on the terms the Treasurer considers appropriate.

(7) The Commission may invest amounts not immediately required for the purposes of the fund as the Treasurer may approve.

### **Nominal Defendant Fund**

**29.(1)** There is to be a fund called the Nominal Defendant Fund.

(2) The following amounts are to be paid into the fund—

- (a) the amounts to be paid by the Treasurer to the credit of the fund under section 106 (Nominal Defendant);
- (b) the income derived from the Nominal Defendant levy;
- (c) the amounts paid to, or recovered by, the Nominal Defendant under this Act;
- (d) amounts advanced to the fund under this section;
- (e) income derived from investment of the fund.

(3) The following amounts are to be paid from the fund—

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- (a) the costs of carrying out the functions of the Nominal Defendant under the statutory insurance scheme;
- (b) amounts required to satisfy liabilities of the Nominal Defendant for motor vehicle accident claims;
- (c) interest on any advance by the Treasurer under this section.

(4) The Treasurer may advance amounts to the fund on the terms the Treasurer considers appropriate.

(5) The Nominal Defendant may invest amounts not immediately required for the purposes of the fund as the Treasurer may approve.

*Division 5—Transfer of CTP business***Transfer of CTP business**

**30.(1)** The Commission may, on the joint application of 2 licensed insurers, approve the transfer of CTP business from one insurer (the “**transferor**”) to the other (the “**transferee**”).

(2) An approval under this section may be given on the conditions the Commission considers appropriate.

(3) Notice of an approval under this section must be published in the Gazette.

(4) On publication of the notice of approval in the Gazette—

- (a) all rights and liabilities subject to the transfer are transferred to, and become rights and liabilities of, the transferee; and
- (b) this Act operates as if the transferee had been selected as the insurer under the CTP policies subject to the transfer; and
- (c) if the transferor’s entire CTP business is transferred—the transferor’s licence is withdrawn.

## **PART 4—CLAIMS**

### *Division 1—The insurer*

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

**31.(1)** If personal injury is caused by, through or in connection with a motor vehicle, the insurer for the statutory insurance scheme is to be decided in accordance with the following principles—

- (a) if the motor vehicle is an insured motor vehicle—the insurer under the CTP insurance policy is, subject to this Division, the insurer;
- (b) if the motor vehicle is not insured but a self-insurer is the registered owner—the self-insurer is the insurer;
- (c) if the motor vehicle is not insured and a self-insurer is not the registered owner—the Nominal Defendant is the insurer;
- (d) if the motor vehicle, or insurer under its CTP insurance policy, cannot be identified—the Nominal Defendant is the insurer.

**(2)** In any legal proceedings, it is to be presumed that a motor vehicle cannot be identified if it is established by affidavit or oral evidence that proper inquiry and search have been made and have failed to establish the identity of the motor vehicle.

**(3)** If a trailer is attached to a motor vehicle or runs out of control after becoming accidentally detached from a motor vehicle, the trailer must be regarded as part of the motor vehicle and the insurer of the motor vehicle is the insurer of the trailer but, in any other case, the insurer of a trailer is the Nominal Defendant whose liability is to be decided as if the Nominal Defendant had issued a separate CTP insurance policy for the trailer.

**(4)** However—

- (a) if a motor vehicle accident involving a trailer happens outside the State—the Nominal Defendant is not the insurer of the trailer under subsection (3); and
- (b) if a trailer is separately insured under a CTP insurance

policy—the insurer under the policy for the trailer is the insurer of the trailer for all purposes.

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

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

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

**33.(1)** The Nominal Defendant's liability for personal injury caused by, through or in connection with a motor vehicle is the same as if the Nominal Defendant had been, when the motor vehicle accident happened, the insurer under a CTP insurance policy under this Act for the motor vehicle.

**(2)** If the insurer under a CTP insurance policy becomes insolvent, the Nominal Defendant becomes the insurer under CTP policies in force under this Act for which the insolvent insurer was formerly the insurer unless the policies are transferred to some other licensed insurer.

**(3)** The Nominal Defendant is liable for personal injury arising out of a motor vehicle accident outside Queensland only if the liability arises under subsection (2).

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

### **Duty to notify accidents**

**34.(1)** If personal injury arises from a motor vehicle accident—

- (a)** the driver, person in charge or owner of the motor vehicle involved in the accident must give written notice to the insurer of the motor vehicle within 1 month after the accident; and
- (b)** a person who proposes to claim damages for personal injury arising from the accident must give written notice to the insurer, or 1 of the insurers, against whom the claim may be made within

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1 month after the person first consults a lawyer about the possibility of making a claim.

(2) A notice under this section must—

- (a) state the date, time and place of the accident and describe how it happened; and
- (b) identify all motor vehicles and drivers involved in the accident as far as known to the person by whom the notice is given; and
- (c) state the names and residential addresses of all persons injured in the accident; and
- (d) if the notice is to be given by an intending claimant, state—
  - (i) the intending claimant's full name, date of birth, and residential address; and
  - (ii) the general nature of the personal injury to the intending claimant; and
  - (iii) the date the intending claimant first consulted a lawyer about the possibility of making a claim.

(3) A person must not fail to give a notice required under this section.

Maximum penalty—5 penalty units.

**Duty to provide information**

**35.(1)** The driver, person in charge or owner of a motor vehicle involved in an accident out of which personal injury arises must, at the request of the insurer of a vehicle involved in the accident, provide any information about the accident that the insurer may reasonably require within 1 month after receiving the request.

(2) A person must not, without reasonable excuse, fail to comply with a request for information under subsection (1).

Maximum penalty—10 penalty units.

(3) A person asked to provide information under subsection (1) has a reasonable excuse for not complying with the request if the information would tend to incriminate the person.

(4) A person, if not the driver, owner, or person in charge of the motor

vehicle insured by the insurer asking for information, need not comply with the request unless it was made with the agreement of the insurer of the motor vehicle.

(5) An insurer who asks for information under this section must disclose fully in the request the nature of the insurer's interest in the motor vehicle accident.

### **Duty to notify claims**

**36.(1)** A person who receives a claim or demand, or notice of a claim or demand, about personal injury arising out of a motor vehicle accident must, within 1 month after receiving it, give the claim, demand or notice to the insurer of the motor vehicle under the statutory insurance scheme.

Maximum penalty—10 penalty units.

(2) A person who receives a writ or other process of a court about a motor vehicle accident claim must immediately give it to the insurer of the motor vehicle under the statutory insurance scheme.

Maximum penalty—10 penalty units.

## ***Division 3—Claims procedures***

### **Notice to be given by claimant**

**37.(1)** Before bringing an action in a court for damages for personal injury arising out of a motor vehicle accident, a claimant must give written notice of the claim to the insurer, or 1 of the insurers, against which the action is to be brought—

- (a) containing a statement, sworn by the claimant, of the information required by regulation; and
- (b) containing an offer of settlement, or a sworn statement of the reasons why an offer of settlement cannot yet be made; and
- (c) accompanied by the documents required by regulation.

(2) The notice must be given within 9 months after the motor vehicle accident or the first appearance of symptoms of the injury.

(3) However, if the motor vehicle cannot be identified, the notice must be given to the Nominal Defendant within 3 months after the motor vehicle accident.

(4) If the notice is not given within the time fixed by this section, the obligation to give the notice continues and the notice, when given, must contain an explanation of the delay but, if a motor vehicle accident claim relates to injury caused by, through or in connection with a motor vehicle that cannot be identified and notice of the claim is not given to the Nominal Defendant within 9 months after the motor vehicle accident, the claim against the Nominal Defendant is barred.

(5) If 2 or more motor vehicles were involved in the motor vehicle accident, the insurer to which a notice of claim is given under subsection (1) must, within 7 days after receiving it, give a copy of the notice to any other insurer of a motor vehicle involved in the motor vehicle accident.

### **Multiple insurers**

**38.(1)** If 2 or more motor vehicles are involved in a motor vehicle accident in circumstances in which 2 or more insurers may be liable on a motor vehicle accident claim arising out of the accident, 1 of the insurers (the “**claim manager**”) is to act for all the insurers under this Division and Divisions 4 (Cooperation between claimant and insurer), 5 (Rehabilitation) and 6 (Proceedings in court).

(2) The claim manager is to be decided by agreement between the insurers within 2 months of the day when notice of the claim was first given under this Division or, if agreement is not reached within the period, the claim manager is to be decided under the industry deed.

(3) Until it is decided under subsection (2) who the claim manager is to be, the insurer to which notice of claim is first given under this Division is the claim manager.

(4) The claim manager—

- (a) may exercise the powers and perform the functions conferred by this Division and Divisions 4, 5 and 6 in relation to the claim and the claimant for all insurers liable, or potentially liable, on the claim; and
- (b) must act as far as practicable with the agreement of the other

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insurers; and

- (c) is entitled to contributions from the other insurers on the basis prescribed by the industry deed for expenditure properly incurred as claim manager, and for amounts awarded or paid out on the claim.

(5) The claim manager and the other insurers must cooperate with each other and must provide each other with information in their possession relevant to the claim.

(6) If the Nominal Defendant is 1 of 2 or more insurers who may be liable on a motor vehicle accident claim because a motor vehicle that cannot be identified was involved in the accident, another insurer may act for the Nominal Defendant under this section only if the Nominal Defendant agrees in writing.

**Response to the notice of claim**

**39.(1)** If a notice of claim is given to an insurer under this Division or purportedly under this Division—

- (a) the insurer must, within 1 month after receiving the notice of claim (even though the notice may have been given out of time), give the claimant written notice—
  - (i) stating whether the insurer is satisfied that the notice has been given as required under this Division; and
  - (ii) if the insurer is not satisfied—identifying the noncompliance and stating whether the insurer waives compliance with the requirements; and
  - (iii) if the insurer does not waive compliance with the requirements—allowing the claimant a reasonable period (at least 1 month) specified in the notice either to satisfy the insurer that the claimant has in fact complied with the requirements or to take reasonable action specified in the notice to remedy the noncompliance; and
- (b) if the insurer is not prepared to waive compliance with the requirements in the first instance—the insurer must, within 1 month after the end of the period specified under

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paragraph (a)(iii), give the claimant a written notice—

- (i) stating that the insurer is satisfied the claimant has complied with the relevant requirements, is satisfied with the action taken by the claimant to remedy the noncompliance or waives the noncompliance in any event; or
- (ii) stating that the insurer is not satisfied that the claimant has taken reasonable action to remedy the noncompliance, with full particulars of the noncompliance and the claimant's failure to remedy it.

(2) If an insurer to which a notice of claim is given under this Division or purportedly under this Division is not, for the purposes of the claim, the insurer of the motor vehicle to which the claim relates under the statutory insurance scheme, the insurer must, instead of responding to the notice of claim under subsection (1), give the claimant written notice denying that the insurer is the insurer under the statutory insurance scheme.

(3) If a notice of claim is given to an insurer under this Division or purportedly under this Division, and the insurer does not respond to the notice within 1 month after receiving it, the insurer is conclusively presumed to be satisfied the notice has been given as required under this Division.

(4) However, the insurer's failure to respond to the notice does not prevent the insurer from later denying that the insurer is the insurer of the motor vehicle to which the claim relates under the statutory insurance scheme, but the insurer is liable to compensate the claimant and the insurer against which the claim properly lies for prejudice resulting from the insurer's failure to respond to the notice under subsection (2).

(5) A claimant may bring a proceeding in a court for damages based on a motor vehicle accident claim only if—

- (a) the claimant has given notice to an insurer who may be liable on the claim under the statutory insurance scheme as required under this Division or the insurer has waived compliance with the requirement and—
  - (i) at least 6 months have elapsed since the notice or the waiver was given; or
  - (ii) the insurer has denied liability on the claim; or

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- (iii) the insurer has admitted liability but only in part and the claimant has given the insurer written notice that the extent of liability is disputed; or
- (b) the court, on application by a claimant dissatisfied with the insurer's response to a notice of a claim under this Division, declares that—
  - (i) notice of claim has been given as required under this Division; or
  - (ii) the claimant is taken to have remedied noncompliance with this Division; or
- (c) the court gives leave to bring the proceeding despite noncompliance with requirements of this Division.

(6) A declaration that a claimant is taken to have remedied noncompliance with this Division, or an order that a claimant has leave to bring a proceeding despite noncompliance with requirements of this Division, may be made on conditions the court considers necessary or appropriate to minimise prejudice to an insurer from the claimant's failure to comply with requirements of this Division.

(7) If a claimant does not comply with the requirements of this Division, a court before which the claimant brings an action for damages on the claim—

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

(8) If a claim against the Nominal Defendant is barred because the claim relates to personal injury caused by, through or in connection with a motor vehicle that cannot be identified and the claimant failed to give notice of claim under this Division within 9 months after the motor vehicle accident, the Nominal Defendant cannot waive compliance with the requirement to give notice within the time allowed by this Division, nor can the court give leave to bring a proceeding in a court despite the noncompliance.

**Minority and legal disabilities**

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

**(2)** A period within which the obligation is to be complied with begins when the claimant's minority or legal incapacity ends.

**(3)** However, this section does not prevent a claimant, or a person acting for the claimant, from complying with an obligation under this Division during the claimant's minority or legal incapacity.

**Insurer must attempt to resolve claim**

**41.(1)** Within 6 months after an insurer receives notice of a motor vehicle accident claim under this Division, the insurer must—

- (a) take reasonable steps to inform itself of the circumstances of the motor vehicle accident out of which the claim arises; and
- (b) give the claimant written notice stating—
  - (i) whether liability is admitted or denied; and
  - (ii) if liability is admitted—whether it is admitted in full or in part; and
  - (iii) if liability is admitted in part—the extent (expressed as a percentage) to which liability is admitted; and
- (c) if the claimant made an offer of settlement in the notice of claim, inform the claimant whether the insurer accepts or rejects the offer or, if the claimant did not make an offer of settlement in the notice, invite the claimant to make a written offer of settlement.

**(2)** As soon as practicable after an insurer receives notice of a claim under the Division, the insurer must—

- (a) make a fair and reasonable estimate of the damages to which the claimant would be entitled in an action against the insurer; and
- (b) make a written offer (or counter-offer) of settlement to the claimant setting out in detail the basis on which the offer is made, or settle the claim by accepting an offer made by the claimant.

**(3)** If a notice of claim is not given as required under this Division, the

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insurer is taken to receive the notice when—

- (a) the insurer gives the claimant notice that the insurer waives compliance with the requirement that has not been complied with or is satisfied the claimant has taken reasonable action to remedy the noncompliance; or
- (b) the court makes a declaration that the claimant is taken to have remedied the noncompliance, or gives leave to bring a proceeding based on the claim despite the noncompliance.

(4) An offer (or counter-offer) of settlement must be accompanied by a copy of medical reports, assessments of cognitive, functional or vocational capacity, or other material in the offerer's possession that may help the person to whom the offer is made make a proper assessment of the offer.

(5) An insurer or claimant to whom a written offer (or counter-offer) of settlement is made must (unless a response to the offer is to be made under subsection (1)(c)) respond in writing to the offer, within 3 months after receiving it, indicating acceptance or rejection of the offer.

(6) An admission of liability by an insurer under this section—

- (a) is not binding on the insurer on another claim arising out of the same motor vehicle accident; and
- (b) is not binding on the insurer at all if it later appears the admission was induced by fraud.

(7) If—

- (a) the insurer denies liability or admits liability to the extent of 10% or less; and
- (b) the insurer's liability is later established in a proceeding before a court to the extent of 80% or more;

the court must award costs in favour of the claimant on a solicitor-and-client basis unless the insurer establishes good reason why it should not.

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

**42.(1)** Once liability has been admitted (in whole or part), it is the duty of the insurer to make payments to or for the claimant for private hospital, medical and pharmaceutical expenses reasonably incurred because of the

injury or a proportionate part of the expenses reflecting the extent to which liability is admitted.

(2) A payment must be made under this section on presentation of an account made up, and verified, as required by regulation.

(3) An insurer may recover payments made under this section if it later appears that the admission of liability was induced by fraud.

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

**43.(1)** An insured person must not, without the insurer's written agreement—

- (a) make an admission of liability on a motor vehicle accident claim; or
- (b) settle, or offer to settle, a motor vehicle accident claim; or
- (c) make a payment, or offer or promise to make a payment, on a motor vehicle accident claim.

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

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

(4) An insured person incurs no civil liability to an insurer through contravention of this section.

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

**44.(1)** If a motor vehicle accident claim is made against an insured person, the insurer—

- (a) must undertake the conduct and control of negotiations and legal proceedings related to the claim; and
- (b) may compromise or settle the claim or legal proceedings related to the claim and act for the insured person in any other way in relation to the claim.

(2) The insured person must sign any documents necessary to give effect

to this section and, if the insured person does not sign or is dead, absent or cannot be found, the insurer may sign for the insured person.

(3) Nothing said or done by an insurer in connection with a motor vehicle accident claim, or legal proceedings related to a motor vehicle accident claim, is an admission of liability in, or otherwise prejudices or affects, another claim or proceedings arising out of the same circumstances.

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

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

**45.(1)** A claimant must cooperate with the insurer and, in particular, must give information reasonably asked by the insurer about—

- (a) the circumstances of the accident out of which the claim arose; and
- (b) the nature of the injuries resulting from the accident and of any consequent disabilities and financial loss; and
- (c) if applicable—the medical treatment and rehabilitation services the claimant has sought or obtained; and
- (d) the claimant’s past medical history (as far as it is relevant to the injury to which the claim relates), and any claims for compensation for personal injury previously made by the claimant.

(2) The claimant must, at the insurer’s request, give to the insurer, within 1 month after receiving the request, copies of all medical reports or other documentary materials in the claimant’s possession relevant to the matters mentioned in subsection (1).

(3) If, after notice of a claim is given to the insurer but before the claim is resolved, the claimant becomes aware of a significant change in the claimant’s medical condition, or in other circumstances, relevant to the extent of the claimant’s disabilities or financial loss, the claimant must, within 1 month after becoming aware of the change, inform the insurer of the change.

(4) The claimant must comply with a request by the insurer to undergo, at the insurer’s expense—

- (a) a medical examination by a doctor to be selected by the claimant from a panel of at least 3 doctors nominated in the request; or
- (b) an assessment of cognitive, functional or vocational capacity by an expert to be selected by the claimant from a panel of at least 3 experts with appropriate qualifications and experience nominated by the insurer in the request;

(5) However, the claimant is not obliged to undergo the examination if it is unreasonable or unnecessarily repetitious.

(6) If 3 doctors or experts with appropriate qualifications and experience are not available for inclusion on a panel under subsection (4), the number on the panel may be reduced to 2.

(7) Any information provided by a claimant under this section must be verified by statutory declaration if the insurer requires it to be verified by statutory declaration.

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

**46.(1)** An insurer and a claimant (or intending claimant) may jointly arrange for an expert report on—

- (a) the motor vehicle accident; or
- (b) the claimant's medical condition or prospects of rehabilitation.

(2) Neither an insurer nor a claimant is under any obligation to agree to a proposal to obtain a report under this section.

(3) The person by whom an expert report is obtained is to be a person, agreed to by both parties, with appropriate qualifications and experience in the relevant field.

(4) The person by whom an expert report is prepared under this section must provide both parties with a copy of the report.

(5) The cost of obtaining a report under this section is to be paid by the parties in proportions agreed to in writing between them or, in default of agreement, in equal proportions.

**Duty of insurer to cooperate with claimant**

**47.(1)** The insurer must cooperate with a claimant and, in particular—

- (a) must provide the claimant with copies of reports and other documentary material in the insurer's possession about the circumstances of the accident or the claimant's medical condition or prospects of rehabilitation; and
- (b) must, at the claimant's request, give the claimant information that is in the insurer's possession, or can be found out from the insured person, about the circumstances of, or the reasons for, the accident.

**(2)** The insurer must—

- (a) provide the claimant with copies of reports and other documentary materials within 1 month after receiving the notice of claim under Division 3 (Claims procedures) or, if the reports or materials come into the insurer's possession later, within 1 month after they come into the insurer's possession; and
- (b) respond to a request under subsection (1)(b) within 1 month after receiving it.

**(3)** If the claimant requires information provided by an insurer under this section to be verified by statutory declaration, the information must be verified by statutory declaration.

**(4)** If an insurer fails, without proper reason, to comply fully with a request under this section, the insurer is liable for costs to the claimant resulting from the failure.

**Non-disclosure of certain material**

**48.(1)** A claimant or insurer is not obliged to disclose information or documentary material under this Division if the information or documentary material is protected by legal professional privilege.

**(2)** However, investigative reports, medical reports and reports relevant to the claimant's rehabilitation must be disclosed even though protected by legal professional privilege but they may be disclosed with the omission of passages consisting only of statements of opinion.

(3) If an insurer has reasonable grounds to suspect a claimant of fraud, the insurer may withhold from disclosure under this Division information or documentary material (including reports that would, apart from this subsection, have to be disclosed under subsection (2)) to the extent the disclosure would alert the claimant to the discovery of the grounds of suspicion or could help in the furtherance of fraud.

(4) An insurer must not withhold information or documentary material from disclosure under this Division without having proper grounds.

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

### **Privilege**

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

### **Court's power to enforce compliance with Division**

50. If a claimant or an insurer fails to comply with a duty imposed by this Division, the court may order the claimant or the insurer to comply with the duty, and may make the consequential or ancillary orders that may be necessary or desirable in the circumstances of the case.

## ***Division 5—Rehabilitation***

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

51.(1) An insurer may make rehabilitation services available to a claimant on the insurer's own initiative or at the claimant's request.

(2) An insurer that makes rehabilitation services available to a claimant before admitting or denying liability on the claim must not be taken, for that reason, to have admitted liability.

(3) Once liability has been admitted on a claim (in whole or in part), the insurer must, at the claimant's request, ensure that reasonable rehabilitation services are made available to the claimant.

(4) The insurer must, before providing rehabilitation services for the

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claimant, give the claimant a written estimate of the cost of the rehabilitation services and a statement of how, and the extent to which, the assessment of damages is likely to be affected by the provision of the rehabilitation services.

(5) The claimant may, if not satisfied that the rehabilitation services made available under this section are reasonable, apply to the court to decide what rehabilitation services are, in the circumstances of the case, reasonable and appropriate, and the court may decide the issue and make consequential orders and directions.

(6) The insurer must bear (or reimburse) the cost of providing rehabilitation services under this section unless the insurer genuinely believes that the cost of providing rehabilitation services requested by the claimant is excessive in view of the damages that the claimant has a reasonable prospect of recovering.

(7) If the insurer genuinely has that belief, the cost is to be divided between the insurer and the claimant in proportions agreed in writing or, in default of agreement, decided by the court on the insurer's application but the agreement or decision lapses if the court later assesses damages (before taking into account the cost of rehabilitation services) at an amount that is enough to cover the cost of the rehabilitation services.

(8) If the cost of providing rehabilitation services under this section is incurred in the claimant's own name, the insurer must reimburse the cost (or the appropriate proportion of the cost agreed or decided under subsection (7)) on presentation of an account made up, and verified, as required by regulation.

(9) The cost to an insurer of providing rehabilitation services under this section must be taken into account in the assessment of damages on the claim.

(10) An insurer who is induced by a claimant's fraud to provide rehabilitation services for the claimant may recover the cost to the insurer of providing the services, as a debt, from the claimant.

***Division 6—Proceedings in court*****Insurer to be joint or sole defendant**

**52.(1)** If an action is brought in a court for damages for personal injury arising out of a motor vehicle accident, the action must be brought against the insured person and the insurer as joint defendants.

**(2)** However, an action may be brought against the insurer alone if—

- (a) the insured person cannot be identified; or
- (b) the insured person is dead or it is impracticable to serve the insured person.

**(3)** If a motor vehicle accident claim lies against 2 or more insurers, all insurers become defendants to the action, but the claim manager continues to represent all insurers in the action unless the court gives leave allowing 1 or more of the insurers to be separately represented.

**(4)** If judgment is given in favour of the claimant on the claim related to personal injury, the judgment must be given against the insurer and not the insured person (unless the judgment is a judgment for exemplary or punitive damages), and, if the action involves other claims (unrelated to the personal injury), a separate judgment must be given on the other claims.

**(5)** It is not a defence to an action under this section for the insurer to prove—

- (a) that the CTP insurance policy was obtained by fraud, or a material misstatement or nondisclosure; or
- (b) that the insured person is in breach of a contractual or statutory obligation.

**(6)** If legal process related to a proceeding based on a motor vehicle accident claim is served on the insurer, the insured person is also taken to have been served.

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

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

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

**Mitigation of damages**

**54.(1)** If an insurer is not satisfied with the action taken by a claimant to mitigate damages, the insurer may give the claimant a written notice suggesting specified action the claimant should take to mitigate damages.

**(2)** The notice may, for example, suggest that—

- (a) the claimant should undergo medical treatment of a specified kind; or
- (b) the claimant should return to work or take specified steps to obtain employment; or
- (c) the claimant should undergo rehabilitation therapy of a specified kind, or undertake specified programs of rehabilitation and training.

**(3)** In assessing damages for personal injury arising out of a motor vehicle accident, the court must—

- (a) consider whether the claimant has failed to take reasonable steps to mitigate damages by not following suggestions made under this section; and
- (b) if it appears the claimant has failed to take reasonable steps to mitigate damages by not following the suggestions—reduce the claimant's damages to an appropriate extent reflecting the failure.

**Awards of exemplary damages**

**55.(1)** No award of exemplary or punitive damages may be made against an insurer on a motor vehicle accident claim.

**(2)** However, if the court is of the opinion that the conduct of an insured person is so reprehensible that an award of exemplary or punitive damages is justified, the court may give a separate judgment against the insured person for the payment of exemplary or punitive damages.

(3) An insured person is not entitled, under a CTP insurance policy, to an indemnity against an award of exemplary or punitive damages.

### **Exclusion of jury trial**

56. A proceeding in a court based on a motor vehicle accident claim must be decided by the court sitting without a jury.

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

57.(1) If notice of a motor vehicle accident claim is given under Division 3 (Claims procedures), or an application for leave to bring a proceeding based on a motor vehicle accident claim is made under Division 3, before the end of the period of limitation applying to the claim, the claimant may bring a proceeding in court based on the claim even though the period of limitation has ended.

(2) However, the proceeding may only be brought after the end of the period of limitation if it is brought within 6 months after the day on which the notice is given or leave to bring the proceeding is granted.

(3) If during the last 14 days of the period of limitation, the claimant wants to give a notice of claim under Division 3 but is unsure to which insurer the notice should be given, the notice is validly given if it is given to the Commission.

(4) After receiving a notice of claim under subsection (3), the Commission must make inquiries to decide the insurer against which the claim properly lies, and pass the notice of claim on to the appropriate insurer.

(5) If a period of limitation is extended under Part 3 (Extension of periods of limitation) of the *Limitation of Actions Act 1974*, this section applies to the period of limitation as extended under the Part.

***Division 7—Insurer’s rights of recourse*****Insurer’s rights of recourse****58.(1)** If—

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

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

**(2)** If—

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

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

**(3)** If—

- (a) personal injury arises out of a motor vehicle accident; and
- (b) the insured person was, at the time of the accident, the driver of the motor vehicle; and
- (c) the concentration of alcohol in the blood of the insured person at the time of the accident exceeded 0.05 g in 100 mL of blood;

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

**(4)** If—

- (a) personal injury arises out of a motor vehicle accident; and
- (b) the motor vehicle accident giving rise to the injury is attributable

in whole or in part to a defect in the motor vehicle; and

- (c) the defect arose from the wrongful act or omission of the manufacturer or a person who carries on a business of repairing motor vehicles;

the insurer may recover, as a debt, from the manufacturer or repairer the proportion of the costs reasonably incurred by the insurer on a claim for the personal injury that reasonably reflects the degree of the manufacturer's or repairer's responsibility for the accident.

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

(6) An action by an insurer under this section may be brought separately or by way of third-party proceeding.

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

**59.(1)** An insurer may recover from a claimant or other person who defrauds or attempts to defraud the insurer on a motor vehicle accident claim any costs reasonably incurred by the insurer because of the fraud.

(2) In subsection (1)—

“insurer” includes the Nominal Defendant.

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

**60.(1)** If personal injury arises out of a motor vehicle accident involving an uninsured vehicle, the Nominal Defendant may recover, as a debt, from the owner or driver of the vehicle (or both) any costs reasonably incurred by the Nominal Defendant on a claim for the personal injury.

(2) It is a defence to an action by the Nominal Defendant under this section—

- (a) as far as recovery is sought against the owner—for the owner to prove—
- (i) that the motor vehicle was driven without the owner's authority; or

- (ii) that the owner believed on reasonable grounds that the motor vehicle was insured; and
- (b) as far as recovery is sought against the driver—for the driver to prove that the driver believed on reasonable grounds that the driver had the owner’s consent to drive the motor vehicle and that the motor vehicle was insured.

(3) The Nominal Defendant may bring a proceeding for recovery of costs under this section before the costs have been actually paid in full and, in that case, a judgment for recovery of costs may provide that, as far as the costs have not been actually paid, the right to recover the costs is contingent on payment.

(4) This section does not affect rights of recovery that the Nominal Defendant may have, apart from this section, against the insured person.

### **Nominal Defendant’s rights of recourse against insurer**

**61.(1)** If an insurer becomes insolvent, any costs reasonably incurred by the Nominal Defendant on claims under CTP insurance policies for which the insolvent insurer was the insurer become debts of the insolvent insurer to the Nominal Defendant and provable in the insolvency.

(2) The debts of the insolvent insurer that arise under subsection (1) have the same order of priority in the winding-up of the insolvent insurer as if the Nominal Defendant were the insured person under policies of insurance issued by the insolvent insurer.

(3) If the claim for which costs were incurred by the Nominal Defendant is covered by a contract of reinsurance, the Nominal Defendant succeeds to the rights of the insolvent insurer under the contract of reinsurance.

## **PART 5—LICENSED INSURERS**

### *Division 1—Licensing of insurers*

#### **Application for licence**

**62.(1)** A body corporate carrying on the business of general insurance in Queensland may apply to the Commission for a licence under this Part.

**(2)** The application—

- (a) must be made in writing; and
- (b) must be accompanied by the information and materials that may be required by regulation.

**(3)** The applicant must provide the Commission with the further information or materials that the Commission may require to decide the application.

**(4)** The Commission may, for example, require the applicant to provide—

- (a) particulars of shareholders, directors, managers and staff; and
- (b) copies of returns and accounts that the applicant is required by law to prepare; and
- (c) particulars of reinsurance arrangements to which the applicant is a party.

**(5)** If an application is made for a licence and, before a licence is granted, there is a change in the matters of which particulars are required in the application, or in the matters contained in a document the applicant is required to give, the body corporate must, within 14 days after the change, give the Commission written notice signed by a director giving particulars of the change.

**(6)** A body corporate must not—

- (a) make an application for a licence; or
- (b) give to the Commission a notice under subsection (5);

that is false or misleading in a material particular.

Maximum penalty—150 penalty units.

(7) An insurer whose licence is withdrawn under this Act may not reapply for a licence within 5 years after the withdrawal.

### **Determination of application**

**63.(1)** The Commission may, after considering an application for a licence—

- (a) grant the licence (conditionally or unconditionally); or
- (b) refuse the application.

(2) In determining the application, the Commission may take into consideration—

- (a) the suitability of the applicant; and
- (b) the nature and extent of the applicant's experience in the business of general insurance; and
- (c) the applicant's paid-up share capital and reserves; and
- (d) any reinsurance arrangements to which the applicant is a party; and
- (e) the likely effect on the statutory scheme of licensing the applicant; and
- (f) any other factors the Commission considers relevant.

(3) A licence may be granted only if the Commission is satisfied that—

- (a) the applicant has enough financial resources to carry on business as a licensed insurer; and
- (b) the applicant has adequately experienced staff available in Queensland to administer personal injury claims under the CTP insurance scheme; and
- (c) the applicant is in all other respects an appropriate person to hold a licence; and
- (d) licensing the applicant would not adversely affect the efficiency and effectiveness of the statutory insurance scheme.

(4) A licence must not be granted until the insurer has executed the

industry deed.

(5) Notice of the grant of a licence under this Part, specifying the date on which the licence takes effect, must be given in the Gazette.

### **Conditions of licence**

**64.(1)** A licence is subject to conditions prescribed by regulation.

(2) A licence may be granted subject to other conditions that the Commission considers appropriate and specifies in the licence.

(3) A condition may, for example, provide that, if the licensed insurer does not, at the end of a stated period, have a share of the market for CTP insurance at least equal to a minimum fixed by regulation, the Commission must withdraw the licence.

(4) The Commission may, by written notice given to a licensed insurer—

- (a) impose conditions or further conditions to which the licence is to be subject; or
- (b) amend or repeal conditions previously imposed.

(5) A condition cannot be imposed to give a particular advantage over other licensed insurers.

(6) A licensed insurer must not contravene a condition of the licence.

Maximum penalty—150 penalty units.

(7) A court by which a licensed insurer is convicted of an offence against subsection (6) may, by order, withdraw the licence.

### **Industry deed**

**65.(1)** A licensed insurer is bound by the industry deed.

(2) The industry deed may—

- (a) require licensed insurers to make disclosures and reports to the Commission in accordance with stipulated standards and requirements; and
- (b) deal with the apportionment of liability, and the sharing of costs, between licensed insurers (including the Nominal Defendant);

and

- (c) provide for the sharing of information between insurers to the mutual benefit of insurers; and
- (d) regulate the management of claims under CTP insurance policies; and
- (e) provide direction and guidance for licensed insurers about initiating, managing, monitoring, and measuring the effectiveness of, the provision of rehabilitation services for injured claimants; and
- (f) regulate in any other way the conduct of insurance business under the statutory insurance scheme.

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

**66.(1)** The Commission may, by Gazette notice, withdraw or suspend a licence if—

- (a) the insurer asks the Commission to withdraw or suspend the licence; or
- (b) the insurer contravenes this Act, a condition of the licence or the industry deed; or
- (c) there is some other reason justifying withdrawal or suspension of the licence.

**(2)** At least 14 days before the withdrawal or suspension of a licence takes effect, the Commission must give the insurer written notice—

- (a) stating the Commission's intention to withdraw or suspend the licence; and
- (b) stating the date on which the withdrawal or suspension will take effect; and
- (c) stating the reason for the proposed withdrawal or suspension of the licence.

**(3)** The Commission must give a copy of the notice to transport administration.

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

**67.(1)** The withdrawal or suspension of a licence does not affect liabilities that had been incurred, or had accrued, before the day of withdrawal or suspension, nor does it affect the insurer's liabilities under CTP insurance policies that came into force before the day of the withdrawal or suspension.

**(2)** An insurer whose licence has been withdrawn, or is under suspension, is subject to this Act and the industry deed in the same way and to the same extent as a licensed insurer until all the insurer's liabilities for CTP insurance business have been fully satisfied.

**(3)** If an insurer whose licence has been withdrawn, or is under suspension, is selected or re-selected to be the insurer under a CTP insurance policy, some other insurer decided by transport administration is to be the insurer under the insurance policy.

**(4)** Transport administration's decision under subsection (3) must be based on random allocation of the CTP policies to the remaining licensed insurers in proportion to their respective shares of the market for CTP insurance.

**(5)** This section does not apply to the withdrawal of a licence on transfer of the insurer's CTP insurance business under Division 5 (Transfer of CTP business) of Part 3 (Compulsory insurance).

**Appeals against the Commission's decisions**

**68.(1)** An insurer may appeal to the Supreme Court against a decision by the Commission to withdraw or suspend the insurer's licence.

**(2)** On the appeal, the Supreme Court may—

- (a)** confirm, change or reverse the decision under appeal; and
- (b)** make any consequential or ancillary orders (including orders for costs) that may be necessary or desirable in the circumstances of the case.

**(3)** If the court changes or reverses the Commission's decision, the Commission must publish notice of the Supreme Court's decision in the Gazette.

***Division 2—Supervision of licensed insurers*****Business plans of licensed insurers**

**69.(1)** A licensed insurer must prepare and give to the Commission a business plan for its compulsory third-party insurance business.

**(2)** The licensed insurer's first business plan must be prepared and given to the Commission before the licence is granted.

**(3)** The licensed insurer must revise its business plan whenever it departs significantly from the plan and at the regular intervals that the Commission directs by written notice.

**(4)** The licensed insurer must, as far as practicable, conduct its compulsory third-party insurance business in accordance with its current business plan.

**(5)** If the insurer departs significantly from the business plan, it must notify the Commission of the departure within 2 months after it happens.

**(6)** A business plan—

- (a)** must describe how the insurer's compulsory third-party business is to be conducted (including marketing, claims handling, the provision of rehabilitation, the keeping of records, systems management and control of costs); and
- (b)** must be prepared in accordance with the written guidelines issued by the Commission and notified to licensed insurers.

**Accounts and returns of licensed insurers**

**70.(1)** A licensed insurer must keep the accounting and other records about its business, and its financial position, that may be required by this Act or the industry deed.

**(2)** The regulations may prescribe accounting or other standards with which the records must comply.

**(3)** A licensed insurer must file returns and other documents with the Commission as required by the industry deed or regulation.

Maximum penalty—150 penalty units.

(4) The regulations may require that returns or accompanying documents be certified by an auditor or actuary.

### **Audit of accounts**

**71.(1)** The Commission may appoint an appropriately qualified person—

- (a) to inspect or audit, and report to the Commission on, the accounting and other records about the business, or the financial position, of a licensed insurer; or
- (b) to carry out an actuarial investigation into, and report to the Commission on, the assets and liabilities, or any class of assets or liabilities, of a licensed insurer.

(2) The appointed person may inspect the accounting and other records of the licensed insurer.

(3) The licensed insurer must provide all reasonable help to assist the inspection, audit or actuarial investigation.

(4) A person must not wilfully delay or obstruct a person exercising powers under this section.

Maximum penalty—150 penalty units or imprisonment for 1 year.

(5) A statement made orally or in writing by a person exercising powers under this section is protected by qualified privilege.

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

**72.(1)** A licensed insurer must immediately inform the Commission if—

- (a) the insurer or a related body corporate fails to make a payment of principal or interest required under any debenture or security issued by the insurer or the related body corporate; or
- (b) a liquidator, receiver or receiver and manager of property of the insurer or a related body corporate is appointed; or
- (c) the insurer or a related body corporate resolves to be wound up; or
- (d) another event happens of a nature prescribed by regulation.

(2) The Commission may require a licensed insurer—

- (a) to disclose to the Commission, within the time allowed by the Commission, specified information about the business or the financial position of the insurer or a related body corporate; or
- (b) to give to the Commission, within the time allowed by the Commission, copies of specified documents.

(3) A requirement under subsection (2) must be made in writing and must state the time within which the requirement must be complied with.

(4) If a requirement under subsection (2) is not complied with, the insurer commits an offence.

Maximum penalty—300 penalty units.

(5) In this section—

“**licensed insurer**” includes a body corporate formerly licensed under this Act.

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

**73.(1)** If the Supreme Court is satisfied, on application by the Commission, that a licensed insurer or former licensed insurer—

- (a) may not be able to meet the insurer’s liabilities under CTP insurance policies; or
- (b) has acted in a way prejudicial to the interests of persons insured under CTP insurance policies;

the Supreme Court may make orders that it considers necessary or desirable to protect the statutory insurance scheme and to ensure, as far as practicable, that the insurer properly discharges its obligations under the statutory insurance scheme.

(2) The Supreme Court may, for example, make orders (including interim orders that are to apply pending the final determination of the application)—

- (a) regulating the administration and payment of claims under CTP insurance policies; or
- (b) prohibiting or regulating any transfer or disposal of, or dealing in,

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assets; or

- (c) requiring the licensed insurer or former licensed insurer to discharge liabilities under CTP insurance policies out of its assets or the assets of a related body corporate; or
- (d) appointing a receiver or receiver and manager, with the powers that the Court directs, of property or part of the property of the licensed insurer or former licensed insurer or a related body corporate.

(3) The Supreme Court may not require the Commission to give an undertaking about damages as a condition of granting an interim order.

(4) On the application of any interested person, the Supreme Court may amend or revoke an order under this section.

(5) The powers conferred on the Supreme Court under this section are not to be exercised in relation to a body corporate that is being wound up.

### *Division 3—Special investigations*

#### **Appointment of investigator**

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

(2) A person is eligible to be appointed as an investigator only if the person is a properly qualified legal practitioner, a properly qualified accountant, or has other appropriate qualifications or experience to carry out an investigation under this Division.

(3) The instrument of appointment—

- (a) must state the terms of the appointment; and
- (b) must state the matters into which the investigation is to be made; and
- (c) may state a period within which the investigation must be completed.

(4) The Commission may, by written notice given to the investigator—

- (a) amend the instrument of appointment in any way; or
- (b) end the appointment.

### **Investigation of related body corporate**

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

### **Powers of investigators**

**76.(1)** An investigator may, by written notice, require an officer of an insurer or body corporate whose affairs are under investigation—

- (a) to produce to the investigator documents of the insurer or body corporate and other documents about its affairs that are in the custody or under the control of the officer; and
- (b) to give the investigator all reasonable help in connection with the investigation; and
- (c) to appear before the investigator for examination on oath or affirmation.

**(2)** An investigator may administer an oath or affirmation.

### **Documents produced to investigator**

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

**(2)** The investigator must permit a person who would be entitled to inspect the document, if it was not being kept by the investigator, to inspect the document at all reasonable times.

### **Examination of officers**

**78.(1)** If the affairs of an insurer or other body corporate are being investigated under this Division, an officer of the insurer or body corporate

must not—

- (a) fail to comply with a lawful requirement (a “**relevant requirement**”) of the investigator to the extent the officer is able to comply with it; or
- (b) in purported compliance with a relevant requirement, give information knowing it to be false or misleading in a material particular; or
- (c) when appearing before an investigator for examination under a relevant requirement—
  - (i) state anything knowing it to be false or misleading in a material particular; or
  - (ii) fail to be sworn or to make an affirmation.

Maximum penalty—300 penalty units or imprisonment for 2 years.

(2) A person who complies with the requirement of an investigator under this section does not incur any liability to another merely because of the compliance.

(3) A person required to attend for examination under this Division is entitled to the allowances and expenses prescribed by regulation.

### **Self-incrimination**

**79.(1)** An officer is not excused from—

- (a) answering a question put to the officer by an investigator; or
- (b) producing a document to an investigator;

on the ground that the answer or production of the document might tend to incriminate the officer.

(2) Before an investigator requires an officer to answer a question or to produce a document, the investigator must inform the officer—

- (a) of the officer’s right to assert that answering the question or production of the document might tend to incriminate the officer; and
- (b) of the effect under subsection (3) of making the assertion.

(3) Neither the answer, nor the fact that the officer has produced the document, is admissible in evidence against the officer in a criminal proceeding (other than a proceeding about the falsity of the answer or document) if—

- (a) before answering the question or producing the document, the officer asserts that answering the question or production of the document might tend to incriminate the officer; and
- (b) answering the question or production of the document might in fact tend to incriminate the officer.

### **Failure of officer to comply with requirement of investigator**

**80.(1)** If an officer fails to comply with a requirement of an investigator, the investigator may certify the failure to the Supreme Court.

(2) If an investigator gives a certificate under subsection (1), the Court may inquire into the case and may—

- (a) order the officer to comply with the requirements of the investigator within a period fixed by the Court; and
- (b) if the Court is satisfied that the officer failed without lawful excuse to comply with the requirement of the investigator—punish the officer in the same way as if the officer had been guilty of contempt of the Court.

### **Recording of examination**

**81.(1)** An investigator must cause a record of the questions asked and the answers given at an examination under this Division to be made.

(2) Subject to section 79 (Self-incrimination), a record of the examination of a person under this Division may be used in evidence in a legal proceeding against the person.

(3) A copy of the record of the examination of a person must be given without fee to the person on the written request of the person.

(4) A record made under this section about an investigation must be included with the investigator's final report on the investigation.

(5) Nothing in this section affects or limits the admissibility of other written or oral evidence.

### **Copy of record of examination may be given to legal practitioner**

**82.(1)** The Commission may give a copy of the record of any examination made under section 81 (Recording of examination) to a legal practitioner who satisfies the Commission that the practitioner is acting for a person who is conducting, or is in good faith contemplating, legal proceedings about affairs being investigated by an investigator under this Division.

(2) The legal practitioner to whom a copy of a record is given under subsection (1)—

- (a) must use the record only for the legal proceedings; and
- (b) must not publish or communicate the record or any part of it for any other purpose.

Maximum penalty—300 penalty units.

### **Delegation of powers by investigator**

**83.(1)** An investigator may delegate any powers under this Division except the power to administer oaths or affirmations and the power to examine on oath or affirmation.

(2) A delegate must produce the instrument of delegation for inspection on request by an officer of an insurer or body corporate whose affairs are being investigated under this Division.

### **Report of investigator**

**84.(1)** An investigator may, and, if directed by the Commission, must make interim reports to the Commission.

(2) On the completion or termination of the investigation, the investigator must report to the Commission the investigator's opinion on the matters subject to the investigation, together with the facts on which the opinion is based.

(3) When making a report under this section, an investigator must give to the Commission any documents of which the investigator has taken possession under this Division.

(4) The Commission—

- (a) may keep the documents for the period that the Commission reasonably considers necessary to enable a decision to be made about whether or not a legal proceeding ought to be started; and
- (b) may keep the documents for any further period that the Commission reasonably considers necessary to enable a legal proceeding to be started and continued; and
- (c) may permit other persons to inspect the documents while they are in the Commission's possession; and
- (d) may permit the use of the documents for a legal proceeding started because of the investigation; and
- (e) must permit a person who would be entitled to inspect any of the documents if they were not in the Commission's possession to inspect the document at all reasonable times.

(5) A copy of a final report must, and a copy of the whole or any part of an interim report may, be given by the Commission to the insurer or other body corporate to which the report relates.

(6) However, the Commission is not bound to give an insurer or other person a copy of a report, or any part of a report, if the Commission is of the opinion that there is good reason for not divulging its contents.

(7) If the Commission is of the opinion that it is in the public interest, the Commission may cause the whole or any part of a report to be printed and published.

(8) If an investigator has caused a record of an examination under this Division to be given to the Commission with the report to which the record relates, a copy of the record may be given to the persons, and on the conditions, that the Commission considers appropriate.

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

**85.(1)** A document certified by the Commission to be a copy of an

investigator's report is admissible in any legal proceeding as evidence of any facts found by the investigator to exist.

(2) Nothing in this section operates to diminish the protection given to witnesses by law.

### **Costs of investigation**

**86.(1)** The Commission may recover the costs of and incidental to an investigation under this Division from the insurer or other body corporate to which the investigation is related.

(2) However, costs may not be recovered from an insurer or other body corporate under this section if the investigation established no irregularity on the part of the insurer or other body corporate.

### **Offences relating to investigations**

**87.(1)** A person who—

- (a) conceals, destroys, mutilates or alters a document of or about an insurer or other body corporate whose affairs are being investigated under this Division; or
- (b) sends, causes to be sent or conspires with someone else to send, out of the State a document mentioned in paragraph (a) or any property belonging to or under the control of the insurer or body corporate;

commits an offence.

Maximum penalty—300 penalty units or imprisonment for 2 years.

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

## **PART 6—MISCELLANEOUS**

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

**88.(1)** A licensed insurer must provide the Commission with—

- (a) periodic returns, as required by regulation, containing the information required by regulation; and
- (b) other information—
  - (i) about claims against the insurer (including claims arising before the commencement of this Act); or
  - (ii) relevant in another way to the administration of this Act;that is required by regulation, or that the Commission may require by written notice to the insurer.

**(2)** An insurer may, for example, be required to provide—

- (a) details of motor vehicle accident claims against the insurer, and the dates when notice of the claims were received by the insurer; and
- (b) information about the claimants; and
- (c) information about whether liability was admitted by the insurer, when liability was admitted or denied and, if liability was admitted, the extent to which liability was admitted; and
- (d) information about the rehabilitation services made available to the claimant and the extent to which the rehabilitation services were used by the claimant; and
- (e) information about the costs of the insurer on claims, and how the costs are made up.

**(3)** The information required under this section must be provided in a form decided by the Commission to be most appropriate for analysis and recording.

**(4)** An insurer must not fail to comply with a requirement imposed under this section.

Maximum penalty—150 penalty units and a further 50 penalty units for each week until the requirement is complied with.

(5) A court that convicts a licensed insurer of an offence against this section may, by order, withdraw the licence.

### **Register of claims**

**89.(1)** The Commission must keep a register of claims.

(2) The register must contain information provided under this Act by insurers that the Commission considers appropriate for inclusion in the register.

(3) The information contained in the register must be accessible to licensed insurers and others to the extent that the Commission decides.

(4) However, information that would, if it became generally known, affect an insurer's competitive position must not be disclosed in a form that would enable the insurer's identification.

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

**90.(1)** Transport administration must, on receipt of an application accompanied by the appropriate fee decided by transport administration, inform the applicant—

- (a) whether a motor vehicle mentioned in the application was insured under this Act as at a specified date; and
- (b) if so—the licensed insurer under the CTP insurance policy.

(2) A certificate given by a delegate of transport administration to the effect that a particular licensed insurer, or the Nominal Defendant, was, on a specified date, the insurer of a particular motor vehicle under the statutory insurance scheme must be accepted as evidence of the fact certified.

### **Insolvent insurers**

**91.(1)** If the Commission publishes a Gazette notice to the effect that a named insurer previously licensed under this Act became insolvent on a particular date, the insurer is presumed, for the purposes of this Act, to have become insolvent on that date.

(2) The liquidator of an insolvent insurer must at the Commission's

request give any information the Commission requires about the stage reached by the insurer in processing claims before becoming insolvent and any other information reasonably required by the Commission.

Maximum penalty—25 penalty units.

### **Disclosure of information**

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

Maximum penalty—50 penalty units.

**(2)** This section does not prevent—

- (a) the exchange of information between insurers; or
- (b) any other form of disclosure authorised or required by the industry deed or regulation.

### **False statements etc.**

**93.(1)** A person must not state anything in, or in connection with, a motor vehicle accident claim that the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units or imprisonment for 1 year.

**(2)** A complaint against a person for an offence against subsection (1) is sufficient if it states that the statement was false or misleading to the person's knowledge.

**(3)** A person must not in connection with a motor vehicle accident claim give someone else a document containing information that the person knows is false, misleading or incomplete in a material particular without—

- (a) telling the other person that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information to the other person if the person

has, or can reasonably obtain, the correct information.

Maximum penalty—150 penalty units or imprisonment for 1 year.

(4) Subsection (3) does not require an insurer to tell someone that a document is false, misleading or incomplete, or to disclose information, if the probable effect would be to alert a person suspected of fraud to the suspicion.

(5) If a court finds a person guilty of an offence against subsection (1) or (3), the court may, on its own initiative or on the application of a person who has suffered loss, order the person who committed the offence to compensate loss resulting from the commission of the offence.

### **Interference with certain documents**

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

Maximum penalty—150 penalty units.

### **Unauthorised policies**

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

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

### **Restriction on commission**

**96.(1)** A licensed insurer, or a broker or other person acting for a licensed insurer, must not pay a commission, or give any consideration in the nature of a commission, to a person for directing CTP insurance business to, or obtaining CTP insurance business for, the licensed insurer if the amount or value of the commission or consideration is more than—

- (a) for a CTP insurance policy for a new motor vehicle or a vehicle to be re-registered after a period of being unregistered—a total of 2% of the gross premium for the policy; or
- (b) for any other CTP insurance policy—a total of 1% of the gross premium for the policy.

Maximum penalty—300 penalty units.

(2) A court that convicts a licensed insurer of an offence against this section may, by order, withdraw the licence.

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

**97.(1)** A licensed insurer, or a broker or other person acting for a licensed insurer, must not discount, reduce, waive, subsidise, or defer payment of, or offer to discount, reduce, waive, subsidise, or defer payment of, the premium on a CTP insurance policy.

Maximum penalty—300 penalty units.

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

Maximum penalty—300 penalty units.

(3) A court that convicts a licensed insurer of an offence against this section may, by order, withdraw the licence.

### **Certain prosecutions require authorisation**

**98.** A prosecution for an offence against this Act may only be brought against an individual by, or with the authority of, the Commission or the Attorney-General.

### **Penalties for offences**

**99.** Any monetary penalty recovered for an offence against this Act must be paid into the Motor Accident Insurance Fund.

### **Regulations**

**100.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may create offences and prescribe penalties of not more than 60 penalty units for each offence.

**Review of Act**

**101.(1)** The Minister must review this Act to ensure that it is adequately meeting community expectations and its provisions remain appropriate.

**(2)** The review must be undertaken as soon as practicable after the end of the period of 5 years starting on the commencement of this Act.

**(3)** As soon as practicable, but within 1 year, after the end of the 5 year period, the Minister must cause a report of the outcome of the review to be laid before the Legislative Assembly.

**Insurance Act 1960 references**

**102.** In an Act or document, a reference to the *Insurance Act 1960* may, if the context permits, be taken to be a reference to this Act.

**Motor Vehicles Insurance Act 1936 references**

**103.** In an Act or document, a reference to the *Motor Vehicles Insurance Act 1936* may, if the context permits, be taken to be a reference to this Act.

**PART 7—TRANSITIONAL PROVISIONS****Nominal Defendant**

**106.(1)** The Nominal Defendant under this Act succeeds to rights and liabilities of the Nominal Defendant under the former Act for personal injury arising out of motor vehicle accidents that happened before the commencement of this Act.

**(2)** If the insurer liable under a contract of insurance issued under the former Act becomes insolvent—

- (a) the Nominal Defendant succeeds to the insolvent insurer's rights and liabilities under the contract of insurance; and
- (b) the provisions of this Act that apply to the insolvency of an insurer under a CTP insurance policy apply with any changes

*Motor Accident Insurance Act 1994*

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prescribed by regulation.

(4) If the amount paid to the credit of the Nominal Defendant Fund proves insufficient to meet the liabilities of the Nominal Defendant under this section, the Commissioner must make payments from the Motor Accident Insurance Fund to meet the deficiency, but the total payments from the Motor Accident Insurance Fund under this section cannot be more than the amount transferred to the Fund under subsection (3).

(5) Subsection (3) expires on 31 December 1994.

***Declaration about Motor Accident Insurance Regulation 1994***

*109.(1) To remove any doubt, it is declared that the Motor Accident Insurance Regulation 1994 was validly made, and (apart from sections 1 and 2) commenced on 1 September 1994.*

*(2) Subsection (1) is a law to which section 20A of the Acts Interpretation Act 1954 applies.*

*(3) This section expires 6 months after its commencement.<sup>3</sup>*

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<sup>3</sup> This provision has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

## SCHEDULE

section 23(1)

### POLICY OF INSURANCE

#### Extent of insurance cover

**1.(1)** This policy insures against liability for personal injury caused by, through or in connection with the insured motor vehicle anywhere in Australia.

**(2)** This policy extends to liability for personal injury caused by, through or in connection with a trailer attached to the insured motor vehicle or that results from the trailer running out of control after becoming accidentally detached from the insured motor vehicle.

**(3)** The liability mentioned in subsection (1) or (2)—

- (a) is a liability for personal injury to which the *Motor Accident Insurance Act 1994* applies<sup>4</sup>; and
- (b) includes the liability of a tortfeasor to make a contribution to another tortfeasor who is also liable for the personal injury.

**(4)** This policy does not insure a person (the “**injured person**”) against injury, damage or loss—

- (a) that arises independently of any wrongful act or omission; or
- (b) to the extent that the injury loss or damage is attributable to the injured person’s own wrongful act or omission.

#### Insured person

**2.** The person insured by this policy is the owner, driver, passenger or other person whose wrongful act or omission in respect of the insured

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<sup>4</sup> See section 5 of the Act.

## SCHEDULE (continued)

motor vehicle causes the injury to someone else and any person who is vicariously liable for the wrongful act or omission.

**Exclusions**

**3.(1)** This policy does not insure an employer against a liability to pay worker's compensation.

**(2)** This policy does not insure against a liability to pay exemplary or punitive damages.

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## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 20 February 1997. Future amendments of the Motor Accident Insurance Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only]

Reprint No.	Amendments included	Reprint date
1	none	1 September 1994
1A	to Act No. 57 of 1995	15 August 1996

## 5 List of legislation

### **Motor Accident Insurance Act 1994 No. 9**

date of assent 7 March 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1994 (1994 SL No. 175)

as amended by—

### **Treasury Legislation Amendment (No. 2) 1994 No. 75 pts 1, 6**

date of assent 1 December 1994

commenced on date of assent

### **Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2**

date of assent 28 November 1995

commenced on date of assent

### **Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

### **Motor Accident Insurance Legislation Amendment Act 1996 No. 53 pts 1–2**

date of assent 20 November 1996

pt 1 commenced on date of assent

ss 5(1), 10 commenced 1 September 1994 (see s 2(1))

remaining provisions commenced 6 December 1996 (1996 SL No. 362)

### **Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch**

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force

## **6 List of annotations**

### **Definitions**

- s 4** sub hdg 1996 No. 53 s 4(1)  
def “**public place**” ins 1996 No. 53 s 4(2)

### **Application of this Act**

- s 5** amd 1996 No. 53 s 5

### **Constitution of the Commission**

- s 7** amd 1996 No. 37 s 147 sch 2

### **Commission is a statutory body**

- s 9A** ins 1996 No. 54 s 9 sch

### **Premiums, levies and administration fee**

- s 12** amd 1996 No. 53 s 6

### **Principles governing levies**

- s 13** amd 1996 No. 53 s 7

### **Nominal Defendant is statutory body**

- s 16A** ins 1996 No. 54 s 9 sch

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

- hdg** amd 1996 No. 53 s 8

- s 20** amd 1996 No. 53 s 8

### **Motor Accident Insurance Fund**

- s 28** amd 1996 No. 53 s 9; amd 1996 No. 54 s 9 sch

### **Nominal Defendant Fund**

- s 29** amd 1996 No. 54 s 9 sch

## **PART 7—TRANSITIONAL PROVISIONS**

- pt hdg** amd R1 (see RA s 39 )

### **Regulations**

- s 100** amd 1994 No. 75 s 32

### **Insurance Act 1960 references**

- s 102** prev s 102 om R1 (see RA s 40)  
pres s 102 ins 1995 No. 57 s 4 sch 2

### **Motor Vehicles Insurance Act 1936 references**

- s 103** prev s 103 om R1 (see RA s 40)  
pres s 103 ins 1995 No. 57 s 4 sch 2

### **Existing insurance contracts**

- s 104** exp 31 December 1995 (see s 104(4))

### **Licences**

- s 105** exp 31 December 1994 (see s 105(2))

### **Nominal Defendant**

- s 106(3)** exp 31 December 1994 (see s 106(5))

**Selection of insurers**

s 107 exp 31 December 1995 (see s 107(2))

**Levies, administration fee and premiums**

s 108 exp 1 July 1995 (see s 108(2))

**Declaration about Motor Accident Insurance Regulation 1994**

s 109 ins 1994 No. 75 s 33  
exp 1 June 1995 (see s 109(3))  
(1) AIA s 20A applies (see s 109(2))

**SCHEDULE—POLICY OF INSURANCE****Insured person**

s 2 amd 1996 No. 53 s 10

## **7 Provisions that have not commenced and are not incorporated into this reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992 s 5(c)).

**Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 s 9** sch reads as follows—

### **MOTOR ACCIDENT INSURANCE ACT 1994**

#### **1. Part 2, division 1, after section 9—**

*insert—*

#### **‘Commission is statutory body**

**‘9A.(1)** Under the *Statutory Bodies Financial Arrangements Act 1982*, the Commission is a statutory body.

**‘(2)** The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the Commission’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.’.

**2. After section 16—**

*insert—*

**‘Nominal Defendant is statutory body**

‘**16A.(1)** Under the *Statutory Bodies Financial Arrangements Act 1982*, the Nominal Defendant is a statutory body.

‘**(2)** The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the Nominal Defendant’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.’.

**3. Section 28(7)—**

*omit.*