



COMPLIANCE FRAMEWORK

Introduction

The Motor Accident Injuries (MAI) Scheme provides personal injury insurance for motor accidents that occur in the ACT. The MAI Commission is responsible for regulating the MAI Scheme. The Scheme consists of two elements, referred in this document to as “Support” and the “MAI insurance business”, with each element only able to exist if the other element exists. Support is concerned with the provision of support, including defined benefits, to people who are injured as a result of a motor accident. The MAI insurance business is concerned with the under-writing aspects of the Scheme - premiums, MAI policies and the licensing of insurers.

The MAI Commission will regulate the MAI Scheme in accordance with legislation. It is expected that all interactions with the MAI Scheme will be conducted in good faith, efficiently and fairly. MAI insurers are expected to provide timely support that will facilitate a return to normal activities of life and work as much as possible for the injured person through effective injury management and income support, in accordance with legislation. The MAI insurance business should be well managed and sustainable over the long term, while remaining fully funded but not excessive.

This compliance framework outlines how the MAI Commission will undertake its multi-faceted regulatory role. The MAI Commission will generally apply a risk-based compliance approach to ensure resources are targeted to where the risks or impacts on the Scheme are likely to be and to take action as appropriate. It is about making compliance choices based on risks and priorities. The risk-based approach is consistent with other regulatory bodies in ACT Government.

Legislative framework

The *Motor Accident Injuries Act 2019* (the Act) is the principal legislation and the overall framework for the operation of the MAI Scheme and the duties and obligations of MAI insurers. There are regulations and guidelines made under the Act, which provide for how insurers are to provide treatment and care, income replacement support, and other aspects of the Scheme. In relation to the MAI insurance business, insurers are to provide business plans and comply with premium guidelines when proposing premiums, comply with licence conditions and other obligations governing their conduct.

The MAI Commission is headed by the Motor Accident Injuries (MAI) Commissioner, a statutory office holder appointed by the Minister under the Act. The MAI Commission started operations on the commencement of the MAI Act on 1 February 2020. The MAI Commission replaced the ACT Compulsory Third-Party Insurance Regulator (CTP Regulator) and the CTP Regulator’s obligations for accidents that occurred before the new scheme commenced are now the responsibility of the MAI Commission. These obligations include overseeing and monitoring the CTP register and procedures, as well as compliance with the CTP legislation until all remaining claims are finalised.

Compared to the previous CTP Regulator¹, the MAI Commission has a new function of providing information and assistance on the new Scheme, including through the new Defined Benefit Information Service, and will undertake a strengthened monitoring and regulatory role particularly in relation to the provision of defined benefits by insurers, aided by an information technology system. The MAI Commission's functions are detailed in section 25 of the MAI Act. Its responsibilities include:

- regulating the licensing of insurers under the MAI Scheme;
- reviewing premiums to ensure they fully fund the present and likely future costs of the scheme but are not excessive;
- monitoring insurers' compliance with their obligations under the Act;
- providing information to the public about the MAI Scheme;
- managing complaints about the market practices of licensed insurers and the handling practices of insurers under the MAI Scheme;
- issuing, monitoring and reviewing the MAI guidelines and other statutory instruments under the Act; and
- monitoring and advising the Minister about the administration, efficiency and effectiveness of the MAI Scheme.

The Commission does not have powers to change a decision of an insurer regarding a defined benefit application or a common law claim.

The powers given to the MAI Commission to perform these functions are wide-ranging. In relation to licensing, Chapter 7 of the MAI Act, they include the power to grant and place conditions on the licence of a MAI insurer. The MAI Commission also has power to discipline a licenced MAI insurer, including by suspending or cancelling their MAI licence. It is a requirement of the licence for a MAI insurer to be part of the Insurance Industry Deed, which regulates additional matters for the conduct of the MAI insurance business. The Deed allows the MAI Commission, MAI insurers and the Nominal Defendant to deal with matters related to business practices for the handling of applications and claims.

The MAI Commission may request information from an insurer relating to the MAI insurance business, i.e., the business and financial affairs of the insurer, as well as in relation to handling applications and claims (see Chapter 9, MAI Act). Chapter 8 provides certain search and entry powers, that may be used by the MAI Commission if the necessity arises.

Under the legislative framework an insurer can seek an internal review of a compliance decision made by the MAI Commission, for example a decision to impose a condition on the insurer's licence. After an internal review is completed, a formal review of the Commission's decision may be requested to be undertaken by the ACT Civil and Administrative Tribunal (ACAT). The ACAT is the review body for the majority of government and statutory authority decisions in the ACT.

¹ The CTP Regulator functions for pre-2020 claims are held by the MAI Commission.

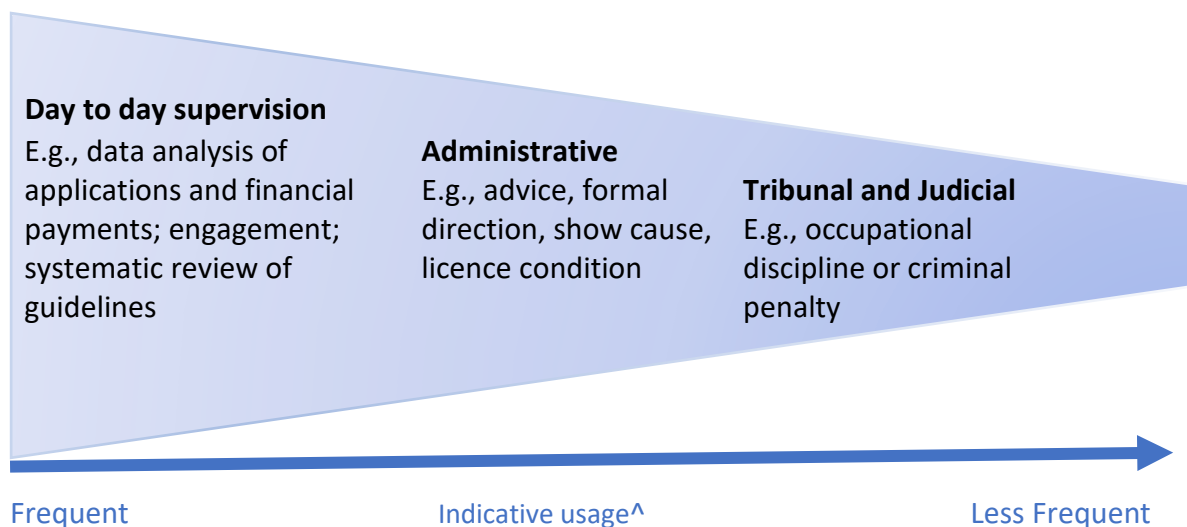
The ACAT can make an order, including confirming the decision made by the MAI Commission; varying the decision, e.g. by changing the wording of a condition that has been imposed, or set aside the decision, e.g. cancelling a condition that is placed on a licence. This review process also applies to any other compliance decision made by the MAI Commissioner.

Separately, or in addition to asking ACAT to undertake a review, a person concerned about a decision made by the MAI Commission may raise their concern with the ACT Ombudsman. The ACT Ombudsman may look into the complaint and ask the MAI Commission to respond, however the Ombudsman does not have powers to change a decision.

Compliance Monitoring and Supervision

The MAI Commission will be strategic in its use of its supervisory tools. A risk-based compliance approach enables the targeting of resources to those areas where they are most needed and will be most effective. The Commission will assess the probability of a breach of the rules or regulation occurring combined with the impact of the occurrence. A risk-based approach is highly adaptable, allowing the Commission to adapt and address emerging risks as the Scheme matures.

Figure 1: indicative usage of activities and supervisory tools



[^] The above listed are examples only. The MAI Commission will choose the most appropriate tool or combination of tools from anywhere along the spectrum. It is not a sequential intervention ladder.

The MAI Commission intends to monitor compliance with the legislation using multiple sources of information, including analysis of the applications and claims data provided by insurers, supplemented by issues identified from other mechanisms. Given the scheme has just commenced, we will, in the first instance, engage with stakeholders and educate them on any questions or issues of compliance that arise.

This is referred to as the engage, educate and enforce model of compliance (see the appendix for a description of these terms). An important part of the compliance strategy is for the MAI Commission to deliver advice and education to relevant target audiences through a number of activities and tools, including publications, factsheets, and web content.

The MAI Commission will carry out both proactive and reactive activities. Resources will be allocated to activities, based on an assessment of the risk to the Scheme with respect to compliance.

Frequent proactive engagement activities will occur. The MAI Commission intends to meet regularly with the Insurance Council of Australia, MAI insurers and the ACT Nominal Defendant, and the professional associations of service providers such as physiotherapists, legal, etc, to discuss operational aspects of the MAI Scheme and ascertain any possible or emerging issues. Reactive activity involves receiving information from any source, assessing the information and considering the most appropriate supervisory response.

The proactive activities will allow the MAI Commission to deliver on a core function, to monitor and determine levels of compliance with the requirements of the legislation, statutory instruments and licences. The aim is to assess the extent of compliance, and to support compliance by providing advice and increasing awareness of persons with obligations under the Act. The MAI Commission can make requests of any MAI Insurer for information that it considers necessary. In addition, the MAI Commission will review the information provided in insurers business plans, premium filings and the register.

The MAI Commission will utilise self-assessment tools that require insurers to conduct a self-assessment of their handling of applications and claims under the Act (and for claims still being managed under the *Road Transport (Third-Party Insurance) Act 2008*). The timing of the assessment is intended to be at least once a year. The tool can be adapted to assess different aspects of compliance and has the advantage of enabling a compliance review to be undertaken in the most efficient manner by us and MAI insurers. It is envisaged that the first assessment tool will have a focus on MAI insurers' performance with applications and will aim to identify any practical issues being encountered.

The MAI Commission will adapt to changes in circumstances and emerging challenges as the Scheme develops and matures. Projects will be developed that look at distinct aspects of Support, for example, sampling income replacement payments, internal review decisions, or the process of assessments for the quality of life benefit. These projects are intended to be short-term, in essence to spot-check an aspect of the Scheme, for issues that may be arising.

Tools of Compliance

The MAI Commission has a range of tools available for its use on a case by case basis and depending on the conduct and the circumstances that need to be addressed. The tools include verbal advice/guidance; written advice; requiring a remedial action plan, including undertakings; giving a written warning (including show cause notice); occupational discipline (requires referral to the ACT Civil and Administrative Tribunal (ACAT)); or criminal prosecution after an investigation. Further detail is provided below on each of these tools in the context of the Scheme.

Advice or guidance – with the aim to raise the parties’ awareness of their obligations and help with information on how to comply and build their capability to address issues and achieve compliance. This can be verbal or written.

Having provided advice or guidance as to how compliance may be achieved and satisfied that a person has taken timely and satisfactory steps to remedy the circumstances, this may be the end of the action taken by the MAI Commission. It should be noted the MAI Commission may also keep a watching brief over the issue and touch base with the party on an ongoing basis to monitor compliance.

Licensing tools - The MAI Commission may add a condition to a licence, for example, requiring certain action to be taken and may require a report back to the Commission. Depending on the severity of the issue, an insurer could be suspended or there may be a decision made to give an insurer a show cause notice (see section 396 of the MAI Act), in response to a material operating risk occurring in the insurer’s MAI business or a material prudential risk arising.

Remedial action/undertakings – an agreement entered into as an alternative to having the matter decided through other processes (for example, occupational discipline). An undertaking provides an opportunity for action to be implemented to address a significant concern. Typically, the activities associated with an undertaking are substantial and must aim to deliver an expected outcome.

The option of an undertaking being given by a licenced entity in connection with a matter will involve consideration of a number of factors, including:

- its nature, extent and impact;
- the quality of the remedial action proposed and the extent to which it achieves measurable improvements, and
- the likelihood that the undertaking will deliver on the expected outcome.

An undertaking will generally not be acceptable where the matter relates to reckless conduct but may be appropriate to address a systemic issue.

Occupational Discipline – applies only to a licensed insurer under the MAI Act. The MAI Commission may choose occupational discipline instead of prosecution. An application for occupational discipline is made to the ACAT, an entity independent of the MAI Commission. The MAI Commission can refer an insurer for an occupational discipline order because a licensed insurer has contravened the Act, a licence condition, the insurance industry deed, an occupational discipline order made by the ACAT, or the licensed insurer obtained their license by fraud or mistake. Further grounds may be prescribed by regulation.

An occupational discipline order may be made that may reprimand the person (includes a corporate entity); require a written undertaking; completion of a training course; give a direction; cancel or suspend the licence; disqualify a person from applying for a licence for a period of time; place conditions on the licence; require they pay the Territory or someone else a stated amount. In applying for occupational discipline, the MAI Commission may request the form of orders (eg. reprimand) in its application to the ACAT.

Prosecution – The MAI Act contains 24 offences that mainly relate to the regulatory aspect of the Scheme, ie. licensing and information provision. The MAI Commission will undertake the initial investigation into allegations that an offence has been committed. The Commission can also seek the assistance of ACT Policing for an investigation.

If sufficient evidence indicates an offence has been committed by a person (includes a corporate entity) then the matter is referred to the Director of Public Prosecutions (DPP) to commence a prosecution. It is to be noted that the DPP has the discretion when deciding to proceed with a prosecution.

It is noted in relation to one offence, section 289(1), use an uninsured motor vehicle on road or road related area, that this offence is dealt with by ACT Policing in the course of traffic duties, and may be managed by them through an infringement notice² under the *Road Transport (Offences) Regulation 2005*. The MAI Commission does not have powers to issue an infringement notice under the MAI Act.

Working with Service Providers

Service providers, such as general practitioners and allied health providers e.g., physiotherapists, chiropractors, etc, play an important role in supporting an injured person. Legal professionals may also support an injured person in understanding and navigating the Scheme, particularly in relation to common law claims. The MAI Commission does not have a direct regulatory role over these service providers and will generally work with the relevant professional associations with respect to issues or concerns that arise in relation to the MAI Scheme.

² An infringement notice is a monetary sanction for an allegation of breaching legislation. Payment of an infringement notice is not an admission of guilt, nor does it constitute a conviction.

The MAI Act does authorise the MAI Commission to make regulations with respect to providers providing information to the Commission and to legal costs. A regulation is proposed that will require lawyers who provide legal services to an injured person for particular scheme matters to inform the Commission of the amounts that were billed or charged to and paid by the injured person. This allows the MAI Commission to undertake price monitoring of legal fees and costs arising in the Scheme. The MAI Commission also has the ability under the MAI Act to publish on its website deidentified information with respect to legal fees and costs, information that will allow an injured person to more easily compare the costs of lawyers and law firms to the general costs information on the MAI website.

Under the regulation, lawyers will be obligated to comply with the requirement to provide the information. The MAI Commission will work with the ACT Law Society to promote the obligation to provide information and will undertake education and engagement activities as necessary.

Transparency of Activities

The MAI Commission will provide an overview of its compliance activities as part of its Annual Report. The MAI Commission will consider when and how to publicise specific compliance activities it undertakes on a case by case basis. This decision will balance the benefits of making certain compliance activities public against the principles of natural justice. The MAI Commission could make certain compliance activities public, to influence behaviours far beyond the affected party. There are certain cases where this would not be appropriate, for example, procedural steps in respect of potential compliance activity, such as a 'show cause' notice. The ACAT and the courts are a public forum, so any occupational discipline or prosecution that is undertaken will be public.

Engage, Educate, Enforce

Engage means ensuring there is a positive working relationship with stakeholders and members of the community.

Educate means taking reasonable steps to ensure people know how to comply. Information is provided to stakeholders and the community to promote understanding and to encourage voluntary compliance. As part of education, some intermediate remedial action may be required.

Enforce means taking action for non-compliance proportional to the impact caused by the conduct and may include a range of actions that are taken by a regulatory body.

Compliance is encouraged through engagement, education and other remedial actions, with an escalation in the level of activity or action to be taken that is appropriate in response to the conduct.