



# COMPLIANCE FRAMEWORK

---

**Motor Accident Injuries Commission, Level 1, 220 London Circuit,  
GPO Box 158, Canberra City ACT 2601**

Telephone: 6207 8876

Web: [www.treasury.act.gov.au/maic](http://www.treasury.act.gov.au/maic)

## 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 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 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 Regulator<sup>1</sup>, the MAI Commission has the function of providing information and assistance on the Scheme, including through the Defined Benefits Information Service, and undertakes a strengthened monitoring and regulatory role particularly in relation to the provision of defined benefits by insurers. This is aided by an information technology system. The Commission's functions are detailed in section 25 of the MAI Act. Our 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 MAI Commission does not have powers to change a decision of an insurer regarding a defined benefits application or a common law claim.

---

The powers given to the MAI Commission to perform these above functions are wide-ranging. In relation to licensing, Chapter 7 of the MAI Act, they include powers to grant and place conditions on the licence of a MAI insurer or direct the insurer to take compliance action, including through an approved remediation plan. The MAI Commission also has powers to discipline a licenced MAI insurer including by suspending or cancelling their MAI licence, or by imposing a financial penalty on the insurer. 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). A licensed insurer must also report to the MAI Commission any conduct which may give rise to a significant contravention of the scheme legislation (reportable conduct) which they become aware of through their business operations or internal compliance programs. Chapter 8 provides

---

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



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.

The engage, educate and enforce model of compliance (see the appendix for a description of these terms) is the MAI Commission's preferred model. An important part of the compliance strategy is for the MAI Commission to deliver advice and education to relevant target audiences through several activities and tools, including publications, factsheets, and web content where there are new requirements in place. The Commission will engage with stakeholders and educate them on any questions or issues of compliance that arise. Insurers may be requested to put actions in place to remediate or mitigate any non-compliance.

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 Commission can make requests of any MAI Insurer for information that it considers necessary. In addition, the 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. The timing of the assessment will 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.

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 and written advice; monitoring insurer reports and action plans; formal directions/approved remediation plans; the financial penalty regime; 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**– 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 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 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.

**Monitoring insurer reports and action plans** - A licensed insurer is required to notify the MAI Commission if they become aware of conduct that causes or is likely to cause a significant contravention of the scheme legislation. The notice is to include details of any actions to be taken by the insurer to investigate the nature and extent of the conduct, remediate the conduct, and remove or mitigate the risk of similar conduct happening.

On receiving a notice, the MAI Commission may gather more information about the conduct from the insurer and also assess the appropriateness and monitor the delivery of any actions in the notice. The Commission may decide to give a formal direction including for the approval of a remediation plan for the reportable conduct or use other compliance tools in relation to the reportable conduct.

A similar approach will be adopted if the MAI Commission is advised of a medium or high risk outcome from a self-assessment review. The Commission may choose to monitor the delivery of any insurer actions to address compliance risks identified following a self-assessment review and may also undertake their own post-implementation review. If these actions do not adequately address the risks or are not progressed in a timely manner the commission may consider using other regulatory tools to achieve compliance.

**Formal Directions/Approved Remediation Plans** - The MAI Commission can direct a licensed insurer to take actions for a contravention or likely contravention of the legislation. This can be done through a general directions power or by making a specific direction for an approved remediation plan. Typically, the directions powers will be used to address more significant or systemic conduct identified by the Commission or in circumstances where insurer-initiated actions may not deliver measurable or timely improvements in compliance. The general directions power may also be used when time critical action is required. Compliance with a general or specific direction is a licence condition.

**Financial Penalty Regime** -The MAI Commission can impose a financial penalty on a licensed insurer if they contravene the Act, a licence condition or the insurance industry deed. The penalties are based on a two-tier system with a higher penalty applying to more serious contraventions and appropriate procedural fairness being adopted for each tier. The maximum amount of a financial penalty is \$20,000 for a minor contravention or \$100,000 for a serious contravention. The Commission can only impose a penalty if it is satisfied that a ground for a financial penalty exists, the imposition of the penalty is in the public interest and is appropriate taking into account the nature of the contravention.

Before deciding to impose a penalty, the MAI Commission has to also consider any written submission responding to a show cause notice and any other matter prescribed by regulation. These regulations cover matters relating to the nature and impact of the conduct in relation to the licensed insurer, the operation of the Act and persons affected by the conduct. Provision is also made for the Commission to consider the same or similar conduct, to the given conduct. The Commission may also consider any other matter which it considers relevant to the given conduct.

Given the requirements which need to be satisfied before the Commission decides to impose a penalty, this tool is likely to be used infrequently, with other administrative tools generally being used as a first line of action to address non-compliance. It is noted, the financial penalty tool can be a timelier and less resource intensive alternative comparatively to occupational discipline and/or prosecution.

**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 Commission. The 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 licence 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 offences that mainly relate to the regulatory aspect of the Scheme, ie. licensing and information provision. The MAI Commission does not have the power to give infringement notices against offences in the Act. The Commission will undertake the initial investigation into allegations that an offence has been committed. The Commission may 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.

### **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.

The MAI Act authorises the MAI Commission to make regulations with respect to providers providing information to the Commission and to legal costs. Lawyers who provide legal services to an injured person for particular scheme matters are required to inform the Commission of the amounts that were billed or charged to and paid by the injured person. This allows the Commission to undertake price monitoring of legal fees and costs arising in the Scheme. The Commission also has the ability under the MAI Act to publish on its website de-identified 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.

### **Transparency of Activities**

The MAI Commission provides an overview of its compliance activities as part of its Annual Report<sup>2</sup>, and may publish other reports on regulatory activities. The 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 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 public fora, so any occupational discipline or prosecution that is undertaken will be public.

---

<sup>2</sup> The MAI Commission’s Annual Report is an annexure to the Chief Minister, Treasury, and Economic Development Directorate’s Annual Report.

### 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.