

Insurance Legislation Amendment (Motor Vehicle Claims Harvesting) Bill 2023

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**Insurance Legislation Amendment (Motor Vehicle Claims Harvesting)
Bill 2023**

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Western Australia

LEGISLATIVE ASSEMBLY

**Insurance Legislation Amendment (Motor
Vehicle Claims Harvesting) Bill 2023**

A Bill for

**An Act to amend the *Motor Vehicle (Third Party Insurance) Act 1943*
and the *Insurance Commission of Western Australia Act 1986*.**

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Insurance Legislation Amendment (Motor Vehicle
Claims Harvesting) Act 2023*.

4

5

2. Commencement

6

This Act comes into operation as follows —

7

(a) Part 1 — on the day on which this Act receives the
Royal Assent;

8

9

(b) the rest of the Act — on the day after that day.

1 **Part 2 — Motor Vehicle (Third Party Insurance)**
2 **Act 1943 amended**

3 **3. Act amended**

4 This Part amends the *Motor Vehicle (Third Party Insurance)*
5 *Act 1943*.

6 **4. Part 1 heading inserted**

7 Before section 1 insert:
8

9 **Part 1 — Preliminary**
10

11 **5. Section 3 amended**

12 In section 3(1) insert in alphabetical order:
13

14 *approved form* means a form approved by the
15 Commission under section 32(1);

16 *drug* has the meaning given in the *Road Traffic*
17 *Act 1974* section 65;

18 *law practice* has the meaning given in the *Legal*
19 *Profession Uniform Law (WA)* section 6(1);

20 *principal*, of a law practice, has the meaning given in
21 the *Legal Profession Uniform Law (WA)* section 6(1);

22 *supervising principal*, of a law practice in relation to a
23 claim, means the principal of the law practice who has
24 the primary responsibility for the conduct of the claim;
25

s. 6

1 **6. Part 2 heading inserted**

2 After section 3 insert:

3

4 **Part 2 — Awards of damages**

5

6 **7. Part 3 heading inserted**

7 After section 3FB insert:

8

9 **Part 3 — Workers' compensation**

10

11 **8. Part 4 heading inserted**

12 Before section 3Q insert:

13

14 **Part 4 — Administrative and insurance matters**

15

16 **9. Section 6 amended**

17 In section 6(1)(c) delete “the Schedule.” and insert:

18

19 Schedule 1.

20

1 **10. Part 5 inserted**

2 After section 25 insert:

3

4 **Part 5 — Claims harvesting safeguards**

5 **Division 1 — Application and interpretation**

6 **25A. Terms used**

7 (1) In this Part —

8 *associate*, of a law practice, has the meaning given in
9 the *Legal Profession Uniform Law (WA)* section 6(1);

10 *claim* means a claim (whether or not made) for
11 damages in respect of the death of, or bodily injury to,
12 a person directly caused by, or by the driving of, a
13 motor vehicle;

14 *claimant* means a person by whom, or on whose
15 behalf, a claim is made;

16 *consideration* means a fee or other benefit;

17 *legal costs*, in relation to a claim, means the fees and
18 costs, including disbursements, a law practice is
19 entitled to charge and recover from a potential claimant
20 or claimant in relation to the claim;

21 *legal services* means work done, or business transacted,
22 in the ordinary course of legal practice;

23 *made*, in relation to a claim, has the meaning given in
24 subsection (2);

25 *reasonably believes* means believes on grounds that are
26 reasonable in the circumstances;

s. 10

1 *service*, for a potential claimant or claimant, means a
2 service related to the potential claimant's or claimant's
3 claim.

4 Examples for this definition:

- 5 1. A legal service.
- 6 2. A medical service.
- 7 3. An advisory service.

- 8 (2) For the purposes of this Part, a claim is *made* when —
- 9 (a) a notice of claim is given under section 29(1)(a)
10 in relation to the claim; or
 - 11 (b) if there is a defect in a notice of claim
12 purportedly given under section 29(1)(a) in
13 relation to the claim, a court makes an order
14 under section 29A(3)(a) or (4)(b) giving leave
15 to commence or continue an action in the court
16 in relation to the claim.

17 **25B. Extraterritorial application**

18 This Part applies —

- 19 (a) within the State; and
- 20 (b) except for section 25G, outside the State to the
21 full extent of the extraterritorial legislative
22 power of the State.

Division 2 — Prohibition on referring claims and contacting to solicit, induce or refer claims

25C. Giving or receiving consideration for claim referrals

(1) In this section —

claim referral, in relation to a payer and a payee —

(a) means a referral of a potential claimant by the payee or someone else —

(i) to the payer for the purpose of the payer providing a service for the potential claimant in relation to a claim of the potential claimant; or

(ii) to the payer or someone else for the purpose of a person, other than the payer, providing a service for the potential claimant in relation to a claim of the potential claimant;

but

(b) does not include the advertisement or promotion of a service or person that results in a potential claimant using the service or person if the advertisement or promotion is made to the public or a group of persons;

payee has the meanings given in subsections (2) and (3);

payer has the meanings given in subsections (2) and (3);

potential claimant includes a claimant.

(2) A person (a *payer*) must not give, agree to give, or allow or cause someone else to give, consideration to another person (a *payee*) for a claim referral.

Penalty for this subsection: a fine of \$10 000.

s. 10

- 1 (3) A person (also a *payee*) must not receive, agree to
2 receive, or allow or cause someone else to receive,
3 consideration from another person (also a *payer*) for a
4 claim referral.
5 Penalty for this subsection: a fine of \$10 000.
- 6 (4) This section does not apply if —
- 7 (a) the payee is a law practice (the *current*
8 *practice*) that is selling all or part of the current
9 practice’s business to another law practice (the
10 *new practice*); and
- 11 (b) the new practice gives, agrees to give, or allows
12 or causes someone else to give the current
13 practice an amount for the referral of a potential
14 claimant to the new practice; and
- 15 (c) the amount is not more than the current
16 unbilled legal costs for the potential claimant;
17 and
- 18 (d) the new practice discloses payment of the
19 amount to the potential claimant in a costs
20 agreement; and
- 21 (e) the sale is not undertaken by the current
22 practice or the new practice for the purpose of
23 avoiding the operation of subsection (2) or (3),
24 as the case requires.

25 **25D. Approach or contact for the purpose of making**
26 **claims or referrals**

- 27 (1) In this section —
28 *potential claimant* includes a claimant.

-
- 1 (2) A person (the *initiator*) must not —
- 2 (a) personally approach or contact a potential
- 3 claimant and either —
- 4 (i) solicit or induce the potential claimant
- 5 to make a claim; or
- 6 (ii) refer the potential claimant to a third
- 7 person or persons (who may be, or
- 8 include, the initiator) to provide a
- 9 service in relation to a claim of the
- 10 potential claimant;
- 11 or
- 12 (b) arrange for someone else (a *fourth person*) to
- 13 personally approach or contact the potential
- 14 claimant and either —
- 15 (i) solicit or induce the potential claimant
- 16 to make a claim; or
- 17 (ii) refer the potential claimant to a third
- 18 person or persons (who may be, or
- 19 include, the initiator) to provide a
- 20 service in relation to a claim of the
- 21 potential claimant.
- 22 Penalty for this subsection: a fine of \$10 000.
- 23 (3) For the purposes of subsection (2) —
- 24 (a) a person personally approaches or contacts a
- 25 potential claimant if the person specifically
- 26 contacts the potential claimant, whether in
- 27 person or by mail, telephone, email or another
- 28 form of electronic communication; and
- 29 (b) a person refers a potential claimant to a third
- 30 person or persons if the person —
- 31 (i) provides the potential claimant with the
- 32 name or contact details of the third
- 33 person or persons; or

s. 10

- 1 (ii) contacts, or offers to contact, the third
2 person or persons on behalf of the
3 potential claimant; or
- 4 (iii) otherwise refers the potential claimant
5 to the third person or persons.
- 6 (4) Subsection (2) does not apply if —
- 7 (a) the initiator and the fourth person (if any) —
- 8 (i) do not expect or intend to receive, and
9 do not receive, consideration because of
10 the approach or contact; and
- 11 (ii) do not ask for someone else to receive,
12 or agree to someone else receiving,
13 consideration because of the approach
14 or contact;
- 15 or
- 16 (b) the initiator or fourth person (if any) —
- 17 (i) is a law practice or lawyer that is
18 supplying, or has previously supplied,
19 the potential claimant with legal
20 services; and
- 21 (ii) reasonably believes the potential
22 claimant will not object to the approach
23 or contact.
- 24 (5) Subsection (2) applies regardless of whether —
- 25 (a) the potential claimant is entitled to make a
26 claim; or
- 27 (b) the potential claimant had already decided to
28 make a claim; or
- 29 (c) a claim has already been made.

1 **25E. Responsibility for acts or omissions of**
2 **representative**

3 (1) In this section —

4 **corporation** includes a public body, a company, or an
5 association or body of persons (corporate or
6 unincorporate);

7 **executive officer**, of a corporation, means a person
8 who is concerned with or takes part in the management
9 of the corporation, whether or not the person is a
10 director or secretary or the person's position is given
11 the name of executive officer;

12 **representative** means —

13 (a) for an individual — an employee or agent of
14 the individual and, if the individual is a partner
15 of a partnership, an employee or agent of any
16 partner in relation to the partnership; or

17 (b) for a corporation — an executive officer,
18 employee or agent of the corporation;

19 **state of mind**, of a person, includes —

20 (a) the person's knowledge, intention, opinion,
21 belief or purpose; and

22 (b) the person's reasons for the intention, opinion,
23 belief or purpose.

24 (2) This section applies to a proceeding for an offence
25 against section 25C(2) or (3) or 25D(2).

26 (3) If it is relevant to prove a person's state of mind about
27 a particular act or omission, it is enough to show —

28 (a) the act was done or omitted to be done by a
29 representative of the person within the scope of
30 the representative's actual or apparent
31 authority; and

32 (b) the representative had the state of mind.

s. 10

- 1 (4) An act done or omitted to be done for a person by a
2 representative of the person within the scope of the
3 representative's actual or apparent authority is taken to
4 have been done or omitted to be done also by the
5 person, unless the person proves they could not, by the
6 exercise of reasonable precautions and proper
7 diligence, have prevented the act or omission.

8 **25F. Additional consequences for law practice**

- 9 (1) This section applies if an associate of a law practice is
10 convicted of an offence against section 25C(2) or (3)
11 or 25D(2) in relation to a claim.
- 12 (2) The law practice is not entitled to charge or recover
13 any legal costs in relation to the claim.
- 14 (3) The law practice must refund any amount of legal costs
15 received in relation to the claim (the ***refundable***
16 ***amount***) to the person from whom it was received.
- 17 (4) If the law practice fails to refund all or part of the
18 refundable amount under subsection (3), the person
19 from whom it was received may, in a court of
20 competent jurisdiction, recover from the supervising
21 principal and the law practice the unpaid portion of the
22 refundable amount as a debt due to that person.

23 **25G. Injunction to prevent or restrain contravention of**
24 **s. 25C or 25D**

- 25 (1) In this section —
26 ***court of competent jurisdiction*** includes a court of
27 another State or Territory vested with jurisdiction
28 under the cross-vesting laws;
29 ***cross-vesting laws*** means the *Jurisdiction of Courts*
30 (*Cross-vesting*) *Act 1987* and the corresponding laws of
31 the other States and Territories;

- 1 **managing director** has the meaning given in the
2 *Insurance Commission of Western Australia Act 1986*
3 section 3.
- 4 (2) This section applies if the managing director
5 reasonably believes a person (an **offending party**) has
6 engaged, is engaging or is proposing to engage in
7 conduct, whether in Western Australia or elsewhere,
8 that contravened, is contravening or would contravene
9 section 25C(2) or (3) or 25D(2).
- 10 (3) The managing director may apply to a court of
11 competent jurisdiction (the **court**) for an injunction
12 restraining the offending party from engaging, or
13 continuing to engage, in the conduct.
- 14 (4) The court may grant an interim injunction restraining
15 the offending party from engaging, or continuing to
16 engage, in the conduct pending a decision about the
17 application.
- 18 (5) After considering the application, the court may —
19 (a) if it is satisfied on the balance of probabilities
20 that the offending party has engaged, or is
21 likely to engage or to continue to engage, in the
22 conduct — grant the injunction; or
23 (b) refuse to grant the injunction.
- 24 (6) The court may grant an injunction under
25 subsection (5)(a) —
26 (a) if it is satisfied the offending party has engaged
27 in the conduct — whether or not it considers
28 the offending party intends to engage again, or
29 to continue to engage, in the conduct; or
30 (b) if it is satisfied the offending party is likely to
31 engage in the conduct if the injunction is not
32 granted — whether or not the offending party
33 has previously engaged in the conduct.

s. 10

- 1 (7) If the court is satisfied there is a sufficient reason for
2 doing so, it may grant an injunction under
3 subsection (4) or (5)(a) without notice to the offending
4 party.

5 **Division 3 — Procedural matters for law practices**

6 **25H. Terms used**

- 7 (1) In this Division —
8 *compliance certificate* means a certificate that satisfies
9 the requirements set out in section 25I.
- 10 (2) For the purposes of this Division, a reference to a
11 *claimant* includes —
12 (a) a reference to a potential claimant; and
13 (b) if there is a defect in a notice of claim
14 purportedly given under section 29(1)(a) in
15 relation to a claim, a reference to the person by
16 whom, or on whose behalf, the claim is
17 purportedly made.

18 **25I. Compliance certificate**

- 19 (1) A compliance certificate, in relation to a law practice
20 retained by a claimant to act in relation to a claim,
21 must —
22 (a) be a statutory declaration in the approved form;
23 and
24 (b) state the matters mentioned in subsections (2)
25 and (3); and
26 (c) be made by the supervising principal of the law
27 practice.

- 1 (2) A compliance certificate must state that —
- 2 (a) the supervising principal and each associate of
- 3 the law practice have not —
- 4 (i) given, agreed to give, or allowed or
- 5 caused someone else to give,
- 6 consideration to another person for a
- 7 claim referral for the claim in
- 8 contravention of section 25C(2); or
- 9 (ii) received, agreed to receive, or allowed
- 10 or caused someone else to receive,
- 11 consideration from another person for a
- 12 claim referral for the claim in
- 13 contravention of section 25C(3);
- 14 or
- 15 (b) section 25C does not apply by reason of
- 16 section 25C(4).
- 17 (3) A compliance certificate must also state that —
- 18 (a) the supervising principal and each associate of
- 19 the law practice have not —
- 20 (i) personally approached or contacted the
- 21 claimant and solicited or induced the
- 22 claimant to make a claim in
- 23 contravention of section 25D(2)(a)(i); or
- 24 (ii) personally approached or contacted the
- 25 claimant and referred the claimant to a
- 26 third person or persons in contravention
- 27 of section 25D(2)(a)(ii); or
- 28 (iii) arranged for someone else to personally
- 29 approach or contact the claimant and
- 30 solicit or induce the claimant to make a
- 31 claim in contravention of
- 32 section 25D(2)(b)(i); or

s. 10

- 1 (iv) arranged for someone else to personally
2 approach or contact the claimant and
3 refer the claimant to a third person or
4 persons in contravention of
5 section 25D(2)(b)(ii);
6 or
7 (b) section 25D(2) does not apply by reason of
8 section 25D(4)(a) or (b), as the case may be.
9 (4) This section does not require or permit the supervising
10 principal of a law practice to give information about
11 communication with a claimant that is subject to legal
12 professional privilege.

13 **25J. Compliance certificate required if law practice**
14 **retained**

- 15 (1) This section applies if a law practice is retained by a
16 claimant to act in relation to the claimant's claim,
17 whether before or after a notice of claim is given, or
18 purportedly given, under section 29(1)(a).
19 (2) The supervising principal of the law practice must give
20 a compliance certificate in relation to the claim to the
21 Commission within 1 month after the day on which the
22 claimant retains the law practice to act in relation to the
23 claim.

24 Penalty for this subsection: a fine of \$10 000.

25 **25K. Compliance certificate required on settlement or**
26 **judgment**

- 27 (1) This section applies if —
28 (a) a law practice is retained by a claimant to act in
29 relation to the claimant's claim; and

- 1 (b) either —
- 2 (i) the claimant or the Commission accepts
- 3 an offer or counter offer of settlement in
- 4 relation to the claim; or
- 5 (ii) judgment is given on the claim.
- 6 (2) Within 7 days after the acceptance or judgment, the
- 7 supervising principal of the law practice must give a
- 8 compliance certificate in relation to the claim to the
- 9 Commission and a copy of the certificate to the
- 10 claimant.
- 11 Penalty for this subsection: a fine of \$10 000.
- 12 (3) The law practice is not entitled to charge or recover
- 13 any legal costs in relation to the claim unless the
- 14 supervising principal of the law practice has, whether
- 15 within or outside the period of 7 days mentioned in
- 16 subsection (2), given a compliance certificate in
- 17 relation to the claim to the Commission and a copy of
- 18 the certificate to the claimant.

19 **25L. Compliance certificate required if referral by sale of**

20 **law practice**

- 21 (1) This section applies if —
- 22 (a) a law practice (the *current practice*) sells all or
- 23 part of the current practice's business to another
- 24 law practice (the *new practice*); and
- 25 (b) as part of the sale, a claimant who retained the
- 26 current practice to act in relation to the
- 27 claimant's claim is referred to the new practice;
- 28 and
- 29 (c) a compliance certificate in relation to the claim
- 30 has not been given to the Commission under
- 31 section 25J(2) before the claimant is referred to
- 32 the new practice.

s. 10

- 1 (2) The supervising principal of the current practice must,
2 before the referral occurs —
- 3 (a) complete a compliance certificate in relation to
4 the claim; and
- 5 (b) give the certificate to the new practice.
- 6 Penalty for this subsection: a fine of \$10 000.
- 7 (3) If the new practice does not receive the certificate
8 mentioned in subsection (2), the supervising principal
9 of the new practice must, as soon as practicable after
10 the referral occurs —
- 11 (a) complete a notice in relation to the claim that
12 states the new practice has not received the
13 certificate; and
- 14 (b) give the notice to the Commission.
- 15 **25M. Alternative to supervising principal completing**
16 **compliance certificate or notice**
- 17 (1) In this section —
- 18 *alternative person*, in relation to the supervising
19 principal of a law practice, means either of the
20 following persons —
- 21 (a) another principal of the law practice;
- 22 (b) if the supervising principal is the only principal
23 of the law practice — a lawyer of the law
24 practice nominated by the supervising
25 principal;
- 26 *compliance certificate provision* means section 25J(2),
27 25K(2) or 25L(2).
- 28 (2) If the supervising principal of a law practice cannot
29 comply with a compliance certificate provision, the
30 provision is satisfied if an alternative person makes and
31 gives the compliance certificate in accordance with

1 section 25I and the compliance certificate provision,
2 instead of the supervising principal.

3 (3) If the supervising principal of a law practice cannot
4 comply with section 25L(3), the section is satisfied if
5 an alternative person completes and gives the notice
6 mentioned in section 25L(3) in accordance with the
7 section, instead of the supervising principal.

8 **25N. False or misleading compliance certificate**

9 A person must not sign, or give to the Commission, a
10 compliance certificate under section 25J(2), 25K(2),
11 25L(2) or 25M(2) that the person knows is false or
12 misleading in a material particular.

13 Penalty: a fine of \$10 000.
14

15 **11. Part 6 heading inserted**

16 Before section 26 insert:
17

18 **Part 6 — Other safeguards**
19

20 **12. Section 27 amended**

21 After section 27(1) insert:
22

23 Penalty for this subsection: a fine of \$10 000.
24

25 **13. Section 27B deleted**

26 Delete section 27B.

s. 14

1 **14. Section 28 amended**

2 (1) In section 28(1) delete “him” and insert:

3

4 the person

5

6 (2) In section 28(3) delete “shall” and insert:

7

8 must

9

10 **15. Part 7 heading inserted**

11 After section 28 insert:

12

13 **Part 7 — General procedural matters**

14

15 **16. Sections 29 and 29A replaced**

16 Delete sections 29 and 29A and insert:

17

18 **28A. Terms used**

19 In this Part —

20 *claim* has the meaning given in section 25A(1);

21 *claimant* has the meaning given in section 25A(1);

22 *notice of claim* has the meaning given in
23 section 29(1)(a);

24 *pre-action conference* has the meaning given in
25 section 29B(2);

26 *pre-action offer* has the meaning given in
27 section 29F(1);

1 *pre-action offers end date*, in connection with a
2 claimant, means the date that is 29 days after the
3 pre-action offers exchange date in connection with the
4 claimant;

5 *pre-action offers exchange date*, in connection with a
6 claimant, means the date by which the claimant and the
7 Commission have submitted pre-action offers.

8 **29. Notice of claim and other requirements for**
9 **commencing or maintaining action**

10 (1) A person shall not, in respect of the death or bodily
11 injury to a person directly caused by, or by the driving
12 of, an insured or an uninsured motor vehicle by another
13 person which may, under the provisions of this Act,
14 give rise to an action or proceeding for damages
15 against either an insured person or the Commission,
16 commence or maintain such an action or proceeding
17 unless the person proposing to claim the damages or
18 some person on the person's behalf —

19 (a) has given to the Commission, as soon as
20 practicable after the occurrence giving rise to
21 the claim, notice in writing prescribed by the
22 regulations of the person's intention to make
23 the claim (a *notice of claim*); and

24 (b) if a request is made under subsection (2), has
25 complied with subsection (3); and

26 (c) unless a pre-action conference has been
27 dispensed with by agreement under
28 section 29B(4), has complied with all of the
29 requirements of sections 29B(2), 29D(3)
30 and 29E(2) in connection with the claim; and

31 (d) has complied with section 29F(1) and (3) in
32 connection with the claim; and

33 (e) has commenced the action in accordance with
34 section 29H(2) or (3).

s. 16

1 (2) The Commission, by giving a written notice, may ask a
2 claimant to provide additional information about the
3 claim and the circumstances out of which it arises.

4 (3) If a request is made, the claimant must, within 1 month
5 after the date of the request, provide the information to
6 the Commission.

7 **29A. Court may grant leave to proceed**

8 (1) In this section —
9 *failure to comply*, in relation to a procedural
10 requirement, includes failure to comply because of a
11 defect in the way the procedural requirement was
12 purportedly complied with;
13 *procedural requirement* means a requirement set out in
14 any of the following provisions —

- 15 (a) section 7(2) or (3);
16 (b) section 8(5);
17 (c) section 29(3);
18 (d) section 29D(3) or section 29E(2) (unless a
19 pre-action conference has been dispensed with
20 by agreement under section 29B(4));
21 (e) section 29F(1), (2), (3), (4) or (5).

22 (2) This section applies if —
23 (a) an action to recover damages in respect of the
24 death of, or bodily injury to, any person,
25 directly caused by, or by the driving of, an
26 insured or an uninsured motor vehicle, is
27 brought or sought to be brought against an
28 insured person or against the Commission; and
29 (b) either —
30 (i) the claimant fails to comply with a
31 procedural requirement; or

- 1 (ii) the notice of claim purportedly given
2 under section 29(1)(a) is defective;
3 and
4 (c) the court in which the action is brought or
5 sought to be brought considers that the failure
6 to comply, or the defect in the notice of claim,
7 as the case may be —
8 (i) was occasioned by mistake,
9 inadvertence or any other reasonable
10 cause; or
11 (ii) does not materially prejudice the
12 Commission in its defence or otherwise.
- 13 (3) The court may, on application by the claimant, if the
14 interests of justice require —
15 (a) by order, give the claimant leave to commence
16 or continue an action in the court on the
17 conditions the court considers appropriate,
18 including in relation to compliance with a
19 procedural requirement or rectification of a
20 defect in the notice of claim purportedly given
21 under section 29(1)(a); and
22 (b) make any other or further order, including as to
23 costs, the court considers appropriate.
- 24 (4) The court may, on application by a party, if the
25 interests of justice require —
26 (a) by order, require another party to comply with a
27 procedural requirement, or to rectify a defect in
28 a notice of claim purportedly given under
29 section 29(1)(a), on the conditions the court
30 considers appropriate; and
31 (b) make any other or further order, including as to
32 costs, the court considers appropriate.

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- 1 (5) If, despite a failure to comply with section 29(1), the
2 claimant commences an action in a court in relation to
3 the claim without the leave of the court, the court may,
4 on application by the Commission, make the orders the
5 interests of justice require, including —
- 6 (a) an order dismissing the action with costs; and
7 (b) if the action was commenced on behalf of the
8 claimant by a law practice, an order that the law
9 practice pay the costs of all parties arising from
10 the claimant's failure to comply with
11 section 29(1).
- 12 (6) For the purposes of this section, a reference to the
13 claimant, if there is a defect in a notice of claim
14 purportedly given under section 29(1)(a) in relation to
15 a claim, includes a reference to the person by whom, or
16 on whose behalf, the claim is purportedly made.
- 17 **29B. Pre-action conference**
- 18 (1) In this section —
- 19 *relevant day*, in relation to a claim, means —
- 20 (a) the day that is 6 months after the day on which
21 the claimant gives, or purports to give, the
22 Commission a notice of claim under
23 section 29(1)(a) in relation to the claim; or
- 24 (b) if the Commission requires additional
25 information under section 29(2), the later of the
26 following days —
- 27 (i) the day that is 6 months after the day on
28 which the claimant gives, or purports to
29 give, the Commission a notice of claim
30 under section 29(1)(a) in relation to the
31 claim;

1 (ii) the day that is 2 months after the day on
2 which the Commission gives the
3 claimant notice of the additional
4 information it requires.

5 (2) Before a claimant commences an action in a court in
6 relation to a claim, there must be a conference of the
7 parties (a *pre-action conference*) unless the parties
8 agree to dispense with it under subsection (4).

9 (3) Any party may call the pre-action conference at a time
10 and place agreed by the parties.

11 (4) The parties may for good reason dispense with the
12 pre-action conference by agreement.

13 Note for this subsection:

14 The parties must still comply with section 29F.

15 (5) On application by a party made after the relevant day
16 in relation to the claim, a court may —

17 (a) make an order —

18 (i) fixing the time and place for the
19 pre-action conference; or

20 (ii) if the interests of justice require,
21 adjourning the application (with liberty
22 to apply) for an indefinite period or a
23 period the court considers appropriate
24 and on the terms and conditions the
25 court considers appropriate;

26 and

27 (b) make any other or further order, including as to
28 costs, the court considers appropriate.

29 (6) If, under subsection (5)(a)(i) or paragraph (a)(ii), the
30 court makes an order fixing a time and place for the

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- 1 pre-action conference, the court may, on application by
2 a party made before the time fixed —
- 3 (a) make an order —
- 4 (i) vacating the previous order to the extent
5 it fixes a time and place for the
6 pre-action conference; and
- 7 (ii) either fixing a later time and place for
8 the pre-action conference or, if the
9 interests of justice require, adjourning
10 the application (with liberty to apply)
11 for an indefinite period or a period the
12 court considers appropriate and on the
13 terms and conditions the court considers
14 appropriate;
- 15 and
- 16 (b) make any other or further order, including as to
17 costs, the court considers appropriate.
- 18 (7) On any later hearing of an application adjourned under
19 subsection (5)(a)(ii) or (6)(a)(ii), the court has all the
20 powers the court had under subsection (5) or (6) in
21 relation to the first hearing.

22 **29C. Claim barred for failure to attend pre-action**
23 **conference**

- 24 (1) A claimant's claim is barred if —
- 25 (a) the court makes an order under
26 section 29B(5)(a)(i) or (6)(a)(ii) fixing the time
27 and place for the pre-action conference; and
- 28 (b) the claimant fails to attend the pre-action
29 conference at the time and place fixed.

- 1 (2) However, subsection (1) does not apply if —
- 2 (a) the order mentioned in subsection (1)(a) had
- 3 been vacated to the extent that it fixed a time
- 4 and place for the pre-action conference; or
- 5 (b) the court makes an order under
- 6 subsection (3)(a).
- 7 (3) If the court considers that the claimant’s failure to
- 8 attend the pre-action conference at the time and place
- 9 fixed was occasioned by mistake, inadvertence or any
- 10 other reasonable cause or that the Commission is not
- 11 materially prejudiced in its defence or otherwise by the
- 12 failure, the court may, on application by the claimant,
- 13 if the interests of justice require, make —
- 14 (a) an order either —
- 15 (i) fixing a further time and place for the
- 16 pre-action conference; or
- 17 (ii) adjourning the application (with liberty
- 18 to apply) for an indefinite period or a
- 19 period the court considers appropriate
- 20 and on the terms and conditions the
- 21 court considers appropriate;
- 22 and
- 23 (b) any other or further order, including as to costs,
- 24 the court considers appropriate.
- 25 (4) Section 29B(6) and subsection (1) apply in relation to
- 26 an order made under subsection (3)(a)(i) as if it were
- 27 an order made under section 29B(6)(a)(ii) fixing the
- 28 time and place for the pre-action conference.
- 29 (5) Section 29B(7) applies in relation to an application
- 30 adjourned under subsection (3)(a)(ii) as if it were an
- 31 application adjourned under section 29B(6)(a)(ii).

- 1 **29D. Procedure before pre-action conference**
- 2 (1) In this section —
- 3 *relevant document*, for a party in connection with a
- 4 claim, means a document that is relevant to the claim
- 5 and is in the party’s custody or control other than —
- 6 (a) a document subject to legal professional
- 7 privilege; or
- 8 (b) a document required to be given under
- 9 subsection (3)(a); or
- 10 (c) a costs statement required to be given under
- 11 subsection (4)(d).
- 12 (2) For the purposes of this section, if a party has legal
- 13 representation in relation to the pre-action conference,
- 14 a document is in the party’s custody or control if it is in
- 15 the custody or control of the party or the party’s
- 16 lawyer.
- 17 (3) At least 7 days before the pre-action conference is held,
- 18 each party must give each other party —
- 19 (a) if the party is a claimant — a statement by the
- 20 party in the approved form giving particulars of
- 21 the heads of damages claimed, and supporting
- 22 documents; and
- 23 (b) a copy of any relevant document not yet given
- 24 to that other party; and
- 25 (c) if the party does not have legal representation
- 26 in relation to the pre-action conference and is a
- 27 claimant — a statement verifying that all
- 28 documents have been given to each other party
- 29 as required under paragraphs (a) and (b); and
- 30 (d) if the party does not have legal representation
- 31 in relation to the pre-action conference and is
- 32 not the claimant — a statement verifying that

- 1 all documents have been given to each other
2 party as required under paragraph (b); and
- 3 (e) if the party has legal representation in relation
4 to the pre-action conference — a certificate (a
5 ***certificate of readiness***) signed by the party’s
6 lawyer stating the matters set out in
7 subsection (4).
- 8 (4) A party’s certificate of readiness must give details of
9 the party’s legal representation in relation to the
10 pre-action conference and must certify that —
- 11 (a) the party is in all respects ready to settle the
12 claim at the conference, including that
13 investigative material, medical and other expert
14 reports have been obtained that are sufficient to
15 enable the party to settle the claim at the
16 conference; and
- 17 (b) if the party is a claimant — all documents have
18 been given to each other party as required
19 under subsection (3)(a) and (b); and
- 20 (c) if the party is not a claimant — all documents
21 have been given to each other party as required
22 under subsection (3)(b); and
- 23 (d) the party’s lawyer has given the party a
24 statement (a ***costs statement***) containing the
25 information required under subsection (5).
- 26 (5) A costs statement must contain the following
27 information —
- 28 (a) details of the legal costs (clearly identifying
29 costs that are legal fees and costs that are
30 disbursements) payable by the party to the
31 party’s lawyer up to the completion of the
32 conference;

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- 1 (b) an estimate of the party's likely legal costs
2 (clearly identifying costs that are legal fees and
3 costs that are disbursements) in each of the
4 following cases —
5 (i) if the claim settles before the pre-action
6 offers end date;
7 (ii) if the claim settles on or after the
8 pre-action offers end date but before the
9 matter proceeds to trial;
10 (iii) if the claim proceeds to trial and is
11 determined by the court;
12 (c) a statement of the consequences to the party, in
13 terms of costs, in each of the cases set out in
14 section 29G(2) and (3).

15 **29E. Procedure for pre-action conference**

- 16 (1) For the purposes of subsection (2), each of the
17 following persons is a conference participant —
18 (a) if a claimant does not have legal representation
19 in relation to the pre-action conference — the
20 claimant, or the claimant's guardian;
21 (b) if a claimant, or a claimant's guardian, has legal
22 representation in relation to the pre-action
23 conference — the lawyer for the claimant or the
24 claimant's guardian;
25 (c) if a party other than the claimant does not have
26 legal representation in relation to the pre-action
27 conference — a person authorised by the party
28 to settle the claim on the party's behalf;
29 (d) if a party other than the claimant has legal
30 representation in relation to the pre-action
31 conference — the lawyer for the party.

- 1 (2) Each conference participant must (unless the
2 conference participant has a reasonable excuse) attend
3 the conference and actively participate in good faith in
4 an attempt to settle the claim.
- 5 (3) If a party has legal representation in relation to the
6 pre-action conference, subsection (2) does not prevent
7 the party, or a person authorised by the party, from also
8 attending the conference.
- 9 (4) If the parties agree, the conference may be conducted
10 by telephone, closed-circuit television or another form
11 of communication allowing contemporaneous and
12 continuous communication between the conference
13 participants.
- 14 (5) Except where the time or place for holding the
15 conference is fixed by a court, the parties may, by
16 agreement, change the time or place for holding the
17 conference or adjourn the conference from time to time
18 and from place to place.

19 **29F. Parties must exchange pre-action offers if claim not**
20 **settled at pre-action conference or conference**
21 **dispensed with**

- 22 (1) Each party must submit to each other party a written
23 final offer as to the amount of damages payable to a
24 claimant (a *pre-action offer*) —
- 25 (a) if there is a pre-action conference and the
26 claimant's claim is not settled during the
27 pre-action conference — at the conference; or
- 28 (b) if a pre-action conference in connection with a
29 claimant's claim has been dispensed with by
30 agreement under section 29B(4) — within
31 28 days after the date of the agreement.

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- 1 (2) If the Commission denies liability, it must submit a
2 pre-action offer of a nil amount.
- 3 (3) A pre-action offer must remain open for 28 days and an
4 action must not be commenced before the pre-action
5 offers end date.
- 6 (4) If a claimant commences an action in a court based on
7 the claim, the claimant must, at the start of the action,
8 file with the court a sealed envelope containing a copy
9 of the claimant's pre-action offer.
- 10 (5) The Commission must, before or at the time of filing a
11 defence, file with the court a sealed envelope
12 containing a copy of the Commission's pre-action
13 offer.
- 14 (6) The court, including a registrar or taxing officer of the
15 court, must not read the pre-action offers until —
16 (a) the claim has been settled and the court is being
17 asked to make a determination about costs; or
18 (b) the claim has been determined by the court.
- 19 (7) In making a determination about costs, the court,
20 including a registrar or taxing officer of the court, must
21 have regard to the matters set out in section 29G.

22 **29G. Matters relevant to costs**

- 23 (1) This section sets out the matters to which a court,
24 including a registrar or taxing officer of the court, must
25 have regard in determining costs in relation to a
26 claimant's claim that has been settled by the parties or
27 determined by the court.
- 28 (2) If the claim is settled before the pre-action offers end
29 date, then costs are to be awarded to the claimant on a
30 party and party basis.

- 1 (3) If the claim is settled on or after the pre-action offers
2 end date, or is determined by the court, for an amount
3 of damages —
- 4 (a) costs are to be awarded to the Commission on a
5 party and party basis if the amount is equal to,
6 or less than, the Commission’s pre-action offer;
7 and
- 8 (b) costs are to be awarded to the claimant on a
9 party and party basis if the amount is more than
10 the Commission’s pre-action offer.
- 11 (4) The court may make an award of costs to compensate a
12 party for costs resulting from a failure by another party
13 to comply with this Part.
- 14 (5) The court must not award a party the party’s costs in
15 relation to the introduction of evidence by the party
16 that the court considers is unnecessarily repetitive.
- 17 Example for this subsection:
- 18 If a claimant is entitled to costs and has called more than
19 1 expert witness with the same area of expertise to give
20 evidence to substantially the same effect, the court must not
21 award costs for more than 1 of those witnesses.
- 22 (6) The court must not award costs to a party in relation to
23 an investigation or gathering of evidence by the party
24 after the pre-action offers end date.
- 25 (7) However, if the court considers the award of damages
26 or the amount of the settlement was affected by a
27 matter that was not reasonably foreseeable at the
28 pre-action offers end date (the *new matter*) —
- 29 (a) subsection (6) does not apply; and
30 (b) subsection (3) applies as if the reference to a
31 pre-action offer in that subsection were a
32 reference to a later offer made having regard to
33 the new matter.

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- 1 Example for this subsection:
2 A claimant's medical condition suddenly and unexpectedly
3 deteriorates after the pre-action offers end date. The court
4 awards a much higher amount as damages than would
5 have been reasonably anticipated at the pre-action offers
6 end date. In applying subsection (3), the court may
7 disregard the pre-action offers and determine costs having
8 regard to later offers of settlement by the claimant and
9 Commission.
- 10 (8) Nothing in this section limits a party's right to have
11 another party's costs taxed.
- 12 **29H. Time for commencing litigation**
- 13 (1) This section applies to a claimant who has satisfied
14 section 29(1)(a) to (d) in relation to a claim.
- 15 (2) The claimant may commence an action in a court in
16 relation to the claim only —
- 17 (a) within 28 days after the pre-action offers end
18 date in connection with the claimant (the
19 **28-day period**); or
- 20 (b) within a further period —
- 21 (i) agreed by the parties within the 28-day
22 period; or
- 23 (ii) fixed by an order of the court on an
24 application made by the claimant within
25 the 28-day period.
- 26 (3) Otherwise, the claimant may commence the action in a
27 court in relation to the claim only in accordance with
28 an order of the court granting leave to commence the
29 action.
- 30 (4) The court may make an order fixing a period for the
31 purposes of subsection (2)(b)(ii), and make any other
32 or further order, including as to costs, that the court
33 considers appropriate.

- 1 (5) The court —
- 2 (a) may make an order granting leave for the
- 3 purposes of subsection (3) only if —
- 4 (i) the claimant establishes that the
- 5 claimant has a reasonable excuse for the
- 6 delay; and
- 7 (ii) the order fixes the period within which
- 8 the action may be commenced;
- 9 and
- 10 (b) may make any other or further order, including
- 11 as to costs, that the court considers appropriate.
- 12 (6) If an action in relation to a claim is not commenced by
- 13 the claimant within a time fixed in accordance with
- 14 subsection (2) or (3), the claim is barred.

15 **29I. Alteration of period of limitation**

- 16 (1) A claimant may commence an action in relation to a
- 17 claim even though the period of limitation applying to
- 18 the claim has ended if —
- 19 (a) before the end of the period of limitation
- 20 applying to the claim —
- 21 (i) a notice of claim is given to the
- 22 Commission under section 29(1)(a) in
- 23 relation to the claim; or
- 24 (ii) there is a defect in a notice of claim
- 25 purportedly given under section 29(1)(a)
- 26 in relation to the claim and the claimant
- 27 has made an application under
- 28 section 29A(3) for leave to commence
- 29 an action in relation to the claim;
- 30 and
- 31 (b) the claimant has complied with
- 32 section 29(1)(b), (c) and (d); and

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- 1 (c) the action is commenced in accordance with
2 section 29H(2) or (3) and within —
- 3 (i) 9 months after the notice of claim is
4 given under section 29(1)(a) or leave to
5 commence the action is given under
6 section 29A(3)(a); or
- 7 (ii) a longer period allowed by the court.
- 8 (2) The court may make an order allowing a longer period
9 for the purposes of subsection (1)(c)(ii), and make any
10 other or further order, including as to costs, that the
11 court considers appropriate.
- 12 (3) If a period of limitation is extended under the
13 *Limitation Act 2005* Part 3, this section applies to the
14 period of limitation as extended under that Part.
15

16 **17. Part 8 heading inserted**

17 After section 30 insert:
18

19 **Part 8 — Miscellaneous matters**
20

21 **18. Section 32 inserted**

22 Before section 33 insert:
23

24 **32. Approved forms**

- 25 (1) The Commission may approve forms for use under this
26 Act.
- 27 (2) The Commission must publish the approved forms on
28 its website.
29

1 **19. Section 35 inserted**

2 After section 34 insert:

3

4 **35. Transitional provision for *Insurance Legislation***
5 ***Amendment (Motor Vehicle Claims Harvesting)***
6 ***Act 2023***

7 (1) In this section —

8 ***alternative person***, in relation to the supervising
9 principal of a law practice, has the meaning given in
10 section 25M(1);

11 ***Amending Act*** means the *Insurance Legislation*
12 *Amendment (Motor Vehicle Claims Harvesting)*
13 *Act 2023*;

14 ***claim*** has the meaning given in section 25A(1);

15 ***commencement day*** means the day on which the
16 Amending Act section 3 comes into operation;

17 ***finalised***, in relation to a claim, means finalised by way
18 of —

19 (a) execution (whether before or after an action is
20 commenced) of a deed of settlement in relation
21 to the claim (whether the deed is called a
22 discharge, release or another name); or

23 (b) discontinuance or dismissal of, or judgment in,
24 an action in relation to the claim.

25 (2) Subsection (3) applies if —

26 (a) a law practice is retained by a potential
27 claimant or claimant before the commencement
28 day to act in relation to the potential claimant's
29 or claimant's claim; and

30 (b) immediately before commencement day, the
31 claim has not been finalised.

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- 1 (3) Despite section 25I(1)(b), a compliance certificate for
2 the claim required to be given under section 25J(2),
3 25K(2) or 25L(2) must state the matters mentioned in
4 section 25I(2) and (3) only in relation to conduct on
5 and after commencement day.
- 6 (4) Part 7 (as amended by the Amending Act) and Part 8
7 apply in relation to a claim only if a notice of the claim
8 is given, or purportedly given, under section 29(1)(a) in
9 relation to the claim on or after commencement day.
- 10 (5) Schedule 1 (as amended by the Amending Act) applies
11 only in relation to a policy of insurance issued on or
12 after commencement day.
13

14 **20. Schedule amended**

- 15 (1) Delete the heading to the Schedule and insert:
16

17 **Schedule 1 — Form of insurance policy**
18

- 19 (2) In the Schedule, under the heading “**WARRANTIES**” —
20 (a) in paragraph (a) delete “his” and insert:
21
22 the owner’s
23
- 24 (b) delete paragraph (c) and insert:
25
- 26 (c) driven by or in charge of the owner or any other
27 person who is —
28 (i) unlicensed to drive; or
29 (ii) under the influence of intoxicating liquor;
30 or

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(iii) impaired by drugs.

(c) delete “his knowledge” and insert:

the owner’s knowledge

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1 **Part 3 — Insurance Commission of Western Australia**
2 **Act 1986 amended**

3 **21. Act amended**

4 This Part amends the *Insurance Commission of Western*
5 *Australia Act 1986*.

6 **22. Part 3 inserted**

7 After section 32 insert:
8

9 **Part 3 — Enforcement of Motor Vehicle (Third**
10 **Party Insurance) Act 1943 Part 5 or false or**
11 **misleading information provisions**

12 **33. Terms used**

13 In this Part —

14 **associate**, of a law practice, has the meaning given in
15 the *Legal Profession Uniform Law (WA)* section 6(1);

16 **associated person**, for an investigated person,
17 means —

- 18 (a) for an investigated person that is a law
19 practice —
20 (i) an associate of the law practice; or
21 (ii) a barrister briefed by the law practice in
22 relation to a claim the Commission
23 reasonably suspects is connected to a
24 contravention of the *Motor Vehicle*
25 *(Third Party Insurance) Act 1943*
26 section 25C(2) or (3) or 25D(2); or

- 1 (iii) a corporation associated with the law
2 practice and the corporation's executive
3 officers;
- 4 or
- 5 (b) for an investigated person who is a lawyer of a
6 law practice —
- 7 (i) an associate of the law practice; or
8 (ii) a barrister briefed by the lawyer in
9 relation to a claim the Commission
10 reasonably suspects is connected to a
11 contravention of the *Motor Vehicle*
12 *(Third Party Insurance) Act 1943*
13 section 25C(2) or (3) or 25D(2); or
- 14 (c) for an investigated person that is a
15 corporation — an executive officer of the
16 corporation; or
- 17 (d) for another investigated person — an entity
18 prescribed by regulation;

19 **claim** has the meaning given in the *Motor Vehicle*
20 *(Third Party Insurance) Act 1943* section 25A(1);

21 **corporation** includes a public body, a company, or an
22 association or body of persons (corporate or
23 unincorporate);

24 **document** includes an electronic document;

25 **electronic document** includes any tape, disc or other
26 device or medium on which information is recorded or
27 stored mechanically, photographically, electronically
28 or otherwise;

29 **executive officer**, of a corporation, means a person
30 who is concerned with or takes part in the management
31 of the corporation, whether or not the person is a
32 director or secretary or the person's position is given
33 the name of executive officer;

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1 *investigated person* means a person in relation to
2 whom an investigator is appointed;
3 *investigator* means an investigator appointed under
4 section 35(3);
5 *lawful requirement* means a requirement under
6 section 36(1), (3) or (5);
7 *law practice* has the meaning given in the *Legal*
8 *Profession Uniform Law (WA)* section 6(1);
9 *reasonably suspects* means suspects on grounds that
10 are reasonable in the circumstances;
11 *relevant provision* means section 44A(3) or (4) or the
12 *Motor Vehicle (Third Party Insurance) Act 1943*
13 section 25C(2) or (3), 25D(2), 25J(2), 25K(2), 25L(2)
14 or 25N.

15 **34. Application of this Part**

- 16 (1) This Part applies to the extent necessary for any
17 investigation of a contravention of a relevant provision.
18 (2) For the purposes of subsection (1), this Part applies
19 outside the State to the full extent of the extraterritorial
20 legislative power of the Parliament.

21 **35. Appointment of investigator**

- 22 (1) In this section —
23 *qualified accountant* means —
24 (a) a member of CPA Australia Ltd ACN
25 008 392 452 who is entitled to use the letters
26 “CPA” or “FCPA”; or
27 (b) a member of Chartered Accountants Australia
28 and New Zealand ARBN 084 642 571 who is
29 entitled to use the designation “CA” or “FCA”;
30 or

- 1 (c) a member of the Institute of Public Accountants
2 Ltd ACN 004 130 643 who is entitled to use the
3 designation “MIPA” or “FIPA”.
- 4 (2) This section applies if the Commission —
- 5 (a) reasonably suspects a person may have
6 contravened a relevant provision; and
- 7 (b) considers it is desirable in the public interest to
8 appoint an investigator to investigate the affairs
9 of the person that may be relevant in relation to
10 the suspected contravention.
- 11 (3) The Commission may, by written instrument, appoint
12 any of the following persons as an investigator —
- 13 (a) a lawyer;
- 14 (b) a qualified accountant;
- 15 (c) another person the Commission considers to be
16 appropriately qualified.
- 17 (4) The instrument of appointment must state the terms of
18 appointment and the matters into which the
19 investigation is to be made.
- 20 (5) The instrument of appointment may state a period
21 within which the investigation must be completed.
- 22 (6) The Commission may, by written notice given to the
23 investigator —
- 24 (a) amend the instrument of appointment; or
25 (b) end the appointment.

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- 1 **36. Powers of investigator**
- 2 (1) An investigator may, by written notice, require an
- 3 investigated person or an associated person for an
- 4 investigated person —
- 5 (a) to produce to the investigator a document that
- 6 is in the custody or control of the investigated
- 7 person or associated person; and
- 8 (b) to give the investigator all reasonable assistance
- 9 in connection with the investigation.
- 10 (2) For the purposes of subsection (1) —
- 11 (a) a document is taken to be in a person’s custody
- 12 or control if the document is capable of being
- 13 generated from an electronic document that is
- 14 in the person’s custody or control; and
- 15 (b) compliance with a requirement under
- 16 subsection (1)(a) to produce a document that is
- 17 an electronic document or that is capable of
- 18 being generated from an electronic document
- 19 requires the giving of a clear image or written
- 20 version of the document.
- 21 (3) An investigator may, by written notice, require an
- 22 investigated person, or an associated person for an
- 23 investigated person, who is an individual to appear
- 24 before the investigator for examination on oath or
- 25 affirmation.
- 26 (4) The investigator may administer an oath or affirmation.
- 27 (5) At the examination and if required by the investigator,
- 28 the investigated person, or the associated person for the
- 29 investigated person, must answer any question put to
- 30 the person in relation to any matter the subject of the
- 31 investigation.

- 1 (6) This section does not prevent a person from refusing to
2 produce a document or answer a question because the
3 document or answer —
4 (a) would tend to incriminate the person; or
5 (b) contains information subject to legal
6 professional privilege.

7 **37. Delegation of powers by investigator**

- 8 (1) An investigator may, by written instrument, delegate a
9 power or function under this Part, other than a power
10 under section 36(3) or (4) or this section.
11 (2) A delegate must produce the instrument of delegation
12 for inspection on request by an investigated person or
13 an associated person for an investigated person.
14 (3) A delegate exercising a power or performing a function
15 that has been delegated to the person in accordance
16 with this section is taken to do so in accordance with
17 the terms of the delegation unless the contrary is
18 shown.

19 **38. Documents produced to investigator**

- 20 (1) If a document is produced to an investigator under
21 section 36, the investigator may keep the document for
22 the period that the investigator reasonably considers
23 necessary for the investigation.
24 (2) The investigator must allow a person who would be
25 entitled to inspect the document if it were not being
26 kept by the investigator to inspect the document at all
27 reasonable times.
28 (3) The investigator must allow an owner of the document
29 to make and keep a copy of it.

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- 1 **39. Compliance with requirements of investigator**
- 2 (1) An investigated person, or an associated person for an
- 3 investigated person, must not —
- 4 (a) fail to comply with a lawful requirement of the
- 5 investigator to the extent the person is able to
- 6 comply with it; or
- 7 (b) in purported compliance with a lawful
- 8 requirement, state anything that the person
- 9 knows is false or misleading in a material
- 10 particular; or
- 11 (c) in purported compliance with a lawful
- 12 requirement, produce a document that the
- 13 person knows is false or misleading in a
- 14 material particular; or
- 15 (d) fail to be sworn or to make an affirmation when
- 16 appearing before an investigator for
- 17 examination under a lawful requirement.
- 18 Penalty for this subsection: a fine of \$10 000.
- 19 (2) Subsection (1)(c) does not apply to a person if the
- 20 person, when producing the document —
- 21 (a) advises the investigator, to the best of the
- 22 person’s ability, how the document is false or
- 23 misleading; and
- 24 (b) if the person has, or can reasonably obtain, the
- 25 correct information — gives the correct
- 26 information to the investigator.
- 27 (3) Subsection (1)(c) does not require an investigator to
- 28 advise someone that a document is false, misleading or
- 29 incomplete, or to disclose information, if the probable
- 30 effect would be to alert a person suspected of fraud to
- 31 the suspicion.

- 1 (4) A person who complies with a lawful requirement does
2 not merely because of the compliance —
- 3 (a) contravene any secrecy or confidentiality
4 requirement imposed on the person (other than
5 in relation to legal professional privilege); or
6 (b) incur any civil liability.
- 7 (5) A person required to attend for examination under
8 section 36(3) is entitled to the fees, allowances and
9 expenses prescribed under the *Evidence Act 1906*
10 section 119 as if —
- 11 (a) the person attending the examination were a
12 person doing eligible service as defined in that
13 section; and
14 (b) the Commission were the liable person as
15 defined in that section.

16 **40. Failure of person to comply with lawful**
17 **requirement of investigator**

- 18 (1) If an investigated person, or an associated person for an
19 investigated person, fails to comply with a lawful
20 requirement of an investigator, the investigator may
21 certify to the Supreme Court that the person has failed
22 to comply with the requirement.
- 23 (2) On receipt of a certification under subsection (1), the
24 Supreme Court may inquire into the case and may —
- 25 (a) order the person to comply with the
26 requirement within a period fixed by the court;
27 and
28 (b) if the court is satisfied that the person failed
29 without lawful excuse to comply with the
30 requirement — punish the person in the same
31 way as if the person had been guilty of
32 contempt of the court.

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- 1 **41. Recording of examination**
- 2 (1) An investigator must make a record of the questions
3 asked and the answers given at an examination under
4 section 36.
- 5 (2) A record of the examination of a person under
6 section 36 may be used in evidence in a legal
7 proceeding against the person.
- 8 (3) A copy of the record of the examination of a person
9 must be given to the person, without a fee, at the
10 person's written request.
- 11 (4) The record must be included with the investigator's
12 final report on the investigation required under
13 section 41A(2).
- 14 (5) Nothing in this section affects or limits the
15 admissibility of other written or oral evidence.
- 16 **41A. Report of investigator**
- 17 (1) An investigator may, and if directed by the
18 Commission must, make interim reports to the
19 Commission.
- 20 (2) On the completion or termination of an investigation,
21 the investigator must make a final report to the
22 Commission stating the investigator's opinion on the
23 matters under investigation, together with the facts on
24 which the opinion is based.
- 25 (3) A copy of the final report must, and a copy of the
26 whole or a part of an interim report may, be given by
27 the Commission to the investigated person to whom the
28 report relates.
- 29 (4) However, the Commission is not bound to give an
30 investigated person a copy of a report, or a part of a

1 report, if the Commission is of the opinion that there is
2 good reason for not divulging its contents.

3 **41B. Admission of investigator's report in evidence**

- 4 (1) A document certified by the Commission to be a copy
5 of an investigator's report is admissible in a legal
6 proceeding as evidence of any facts stated in the report.
- 7 (2) Nothing in this section operates to diminish the
8 protection given to witnesses by law.

9 **41C. Documents taken during investigation**

- 10 (1) On the completion or termination of an investigation,
11 the investigator must give the Commission any
12 documents the investigator has taken possession of
13 under section 38.
- 14 (2) The Commission may —
- 15 (a) keep the documents for the period that the
16 Commission reasonably considers necessary to
17 enable a decision to be made about whether or
18 not a legal proceeding ought to be commenced;
19 and
- 20 (b) keep the documents for any further period the
21 Commission reasonably considers necessary to
22 enable a legal proceeding to be commenced and
23 continued.
- 24 (3) The Commission may —
- 25 (a) allow other persons to inspect the documents
26 while they are in the Commission's possession;
27 and
- 28 (b) allow the use of the documents for a legal
29 proceeding commenced because of the
30 investigation.

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1 (4) The Commission must allow a person who would be
2 entitled to inspect a document if it were not in the
3 Commission's possession to inspect the document at all
4 reasonable times.

5 (5) The Commission must allow an owner of a document
6 to make and keep a copy of it.

7 **41D. Other offences about investigations**

8 (1) A person must not conceal, destroy, mutilate or alter a
9 document of or about an investigated person whose
10 affairs are being investigated under this Part.

11 Penalty for this subsection: a fine of \$10 000.

12 (2) It is a defence to a prosecution of an offence against
13 subsection (1) for the accused to prove that the accused
14 did not act with intent to defeat the purposes of this
15 Part or to delay or obstruct the carrying out of an
16 investigation under this Part.

17 **41E. Confidentiality of information**

18 (1) In this section —
19 *confidential information* means information that has
20 become known to an investigator in the course of
21 performing the investigator's functions for this Part.

22 (2) An investigator must not, whether directly or
23 indirectly, disclose confidential information.

24 Penalty for this subsection: a fine of \$10 000.

25 (3) However, subsection (2) does not apply if —
26 (a) the confidential information is disclosed —
27 (i) in the performance of functions under
28 this Part; or
29 (ii) with the written consent of the person to
30 whom the information relates; or

- 1 (iii) to the person to whom the information
2 relates; or
3 (iv) in a form that could not identify any
4 person;
5 or
6 (b) the disclosure of the confidential information is
7 authorised under an Act or another law.

8 **41F. Legal Practice Board information sharing**

- 9 (1) In this section —
10 ***Legal Practice Board*** means the Legal Practice Board
11 established under the *Legal Profession Uniform Law*
12 *Application Act 2022* section 30(1).
13 (2) The Commission and the Legal Practice Board may
14 share information for the purposes of performing their
15 functions under this Act, the *Motor Vehicle (Third*
16 *Party Insurance) Act 1943* and the *Legal Profession*
17 *Uniform Law Application Act 2022*.

18 **41G. Commissioner for Consumer Protection**
19 **investigation and information sharing**

- 20 (1) In this section —
21 ***Commissioner for Consumer Protection*** means the
22 Commissioner as defined in the *Fair Trading Act 2010*
23 section 6;
24 ***regulated person*** —
25 (a) means a regulated person as defined in the *Fair*
26 *Trading Act 2010* section 88A; and
27 (b) includes a former regulated person.
28 (2) The Commission may request the Commissioner for
29 Consumer Protection to conduct an investigation into
30 whether a regulated person has contravened the *Motor*

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- 1 *Vehicle (Third Party Insurance) Act 1943*
2 section 25C(2) or (3) or 25D(2) if the Commission —
- 3 (a) reasonably suspects the regulated person may
4 have contravened the *Motor Vehicle (Third*
5 *Party Insurance) Act 1943* section 25C(2)
6 or (3) or 25D(2); and
- 7 (b) considers it is desirable in the public interest to
8 request the Commissioner for Consumer
9 Protection to investigate the affairs of the
10 regulated person that may be relevant in
11 relation to the suspected contravention.
- 12 (3) If the Commission makes a request under
13 subsection (2), the *Fair Trading Act 2010* (the **FTA**)
14 applies as if —
- 15 (a) assisting the Commission by conducting a
16 requested investigation were a function of the
17 Commissioner for Consumer Protection under
18 the FTA section 57A; and
- 19 (b) for the purposes of performing the function, the
20 Commissioner for Consumer Protection were
21 able, under the FTA section 88B(1), to conduct
22 any investigation that the Commissioner for
23 Consumer Protection considers necessary or
24 expedient for the purposes of determining
25 whether the regulated person has contravened
26 the *Motor Vehicle (Third Party Insurance)*
27 *Act 1943* section 25C(2) or (3) or 25D(2); and
- 28 (c) for the purposes of the FTA section 88B(2), the
29 requested investigation were an investigation
30 under FTA section 88B.
- 31 (4) The Commission and the Commissioner for Consumer
32 Protection may share information for the purposes of
33 performing their functions under this Act, the *Motor*
34 *Vehicle (Third Party Insurance) Act 1943* and the FTA.

- 1 **41H. Agreements with Transport Director General and**
2 **information sharing**
- 3 (1) In this section —
- 4 *Transport Director General* means the CEO as defined
5 in the *Road Traffic (Administration) Act 2008*
6 section 4.
- 7 (2) The Commission and Transport Director General may
8 enter an agreement providing for the Transport
9 Director General to assist with investigating the affairs
10 of persons connected with tow truck operations or
11 storage yard operations that may be relevant in relation
12 to suspected contraventions of the *Motor Vehicle*
13 (*Third Party Insurance*) *Act 1943* section 25C(2) or (3)
14 or 25D(2).
- 15 (3) It is a term of an agreement entered into under
16 subsection (2) that the Transport Director General will
17 assist with investigating the affairs of a person that may
18 be relevant in relation to a suspected contravention
19 only if the Commission —
- 20 (a) reasonably suspects the person is or was
21 connected with tow truck operations or storage
22 yard operations and may have contravened the
23 *Motor Vehicle (Third Party Insurance)*
24 *Act 1943* section 25C(2) or (3) or 25D(2); and
- 25 (b) considers it is desirable in the public interest to
26 refer the matter to the Transport Director
27 General for assistance with investigating the
28 affairs of the person that may be relevant in
29 relation to the suspected contravention; and
- 30 (c) refers the matter to the Transport Director
31 General for this assistance.

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- 1 (4) The Commission and the Transport Director General
2 may share information for the purposes of an
3 agreement or for the purposes of the Commission
4 performing its functions under this Act and the *Motor*
5 *Vehicle (Third Party Insurance) Act 1943*.

6 **41I. Information sharing with other jurisdictions**

- 7 (1) In this section —
8 *corresponding entity* means an entity of another State
9 or Territory that has responsibility for administering a
10 corresponding law;
11 *corresponding law* means a law of another State or
12 Territory that is prescribed by the regulations as
13 corresponding to all or part of the *Motor Vehicle (Third*
14 *Party Insurance) Act 1943* Part 5.
15 (2) The Commission and a corresponding entity may share
16 information for the purposes of performing their
17 functions under this Act, the *Motor Vehicle (Third*
18 *Party Insurance) Act 1943* Part 5 and the
19 corresponding law for the entity.
20

21 **23. Section 44A inserted**

22 After section 44 insert:
23

24 **44A. False or misleading information provided to**
25 **Commission**

- 26 (1) In this section —
27 *relevant Act* means this Act or any of the following
28 Acts —
29 (a) the *Motor Vehicle (Catastrophic Injuries)*
30 *Act 2016*;

- 1 (b) the *Motor Vehicle (Third Party Insurance)*
2 *Act 1943*;
- 3 (c) the *Workers' Compensation and Injury*
4 *Management Act 1981*.
- 5 (2) This section applies in relation to a statement made or
6 document given to the Commission in connection with
7 a relevant Act.
- 8 (3) A person must not state anything that the person knows
9 is false or misleading in a material particular.
10 Penalty for this subsection: a fine of \$10 000.
- 11 (4) A person must not give a document that the person
12 knows is false or misleading in a material particular.
13 Penalty for this subsection: a fine of \$10 000.
- 14 (5) Subsection (4) does not apply to a person if the person,
15 when giving a document —
- 16 (a) advises the Commission, to the best of the
17 person's ability, how the document is false or
18 misleading; and
- 19 (b) if the person has, or can reasonably obtain, the
20 correct information — gives the correct
21 information to the Commission.
- 22 (6) Subsection (4) does not require the Commission to
23 advise someone that a document is false, misleading or
24 incomplete, or to disclose information, if the probable
25 effect would be to alert a person suspected of fraud to
26 the suspicion.
27
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