

Information sheet

MAiC prosecutions approach

1 December 2021

Purpose

This document provides general information about the Motor Accident Insurance Commission's (MAiC) approach to prosecutions primarily for offences committed by persons against the Motor Accident Insurance Act 1994 (Qld) (the **MAI Act**) and the National Injury Insurance Scheme (Queensland) Act 2016 (the **National Injury Act**).

Prosecutions serve as a strong deterrent against potential offenders and helps to preserve the integrity of the CTP scheme. Prosecutions also form part of MAiC's broader enforcement approach for regulatory action against licenced insurers in relation to systemic or repeated breaches of the MAI Act and provisions that carry prescribed penalties.

MAiC receives notifications and referrals of potential matters for prosecution from the general public, licenced insurers and other sources. MAiC encourages individuals and stakeholders to continue to assist its efforts to identify and respond to the conduct of persons who have engaged in illegal and inappropriate conduct, or who know of others whose conduct may have been inappropriate.

Background

MAiC is the regulatory authority responsible for the ongoing management of the Compulsory Third Party (CTP) insurance scheme in Queensland. MAiC performs prosecutorial functions in line with relevant legislation and prosecution guidelines such as those adopted by the Office of the Director of Public Prosecutions, Queensland.

MAiC regularly undertakes prosecutions against claimants who have acted dishonestly in a CTP claim. There is also a strong focus to investigate and consider prosecuting persons involved in 'claim farming' related activities.

Offences

The Insurance Commissioner has statutory authority to prosecute persons for various offences under the MAI Act or the National Injury Act, including:

- Offences that relate to fraud and for providing false or misleading information or documents to MAiC, the Nominal Defendant or an insurer licenced under the MAI Act
- 'Claim farming' offences that relate to persons who give or receive consideration for claim referrals and approach/contact other persons and solicit/induce those persons to make a claim
- Offences that relate to licenced insurers in areas such as licence applications, fixing insurance premiums, discounting insurance premiums, provision of information to MAiC and inducements for directing CTP insurance business to an insurer
- Offences that relate to persons who engage in dishonest conduct pursuant to sections 132 and 133 of the National Injury Act.

Guiding principles

When exercising its investigatory and prosecutorial functions, MAiC relies on a number of guiding principles:

Presumption of innocence

- Recognising that a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.
- The onus of proof is on the Insurance Commissioner to prove the defendant's guilt beyond reasonable doubt

Fairness and without bias

- Conducting timely enquiries and necessary investigations into all significant aspects of a matter, including taking action that is fair and reasonable
- Acting in an unbiased manner and assisting the court to arrive at the truth, ensuring that the prosecution's case is presented properly and with fairness to the defendant

Integrity and professionalism

- Exercising powers independently in the public interest with integrity and professionalism and without fear, favour or bias

- Providing clarity and certainty about priorities and processes while taking account of the circumstances of each matter
- Conducting prosecutions in a timely and efficient manner, including (if applicable) disclosure of material and briefs of evidence to the defence within a reasonable timeframe

Independence and objectivity

- Acting objectively to ensure actions are based on evidence and that appropriate checks and balances exist in the decision making process

Respect for human rights

- Basing a decision to continue or discontinue a prosecution on evidence and applicable law and not be influenced by factors such as race, religion, sex, national origin or political views
- Exercising powers with appropriate regard to the Human Rights Act 2019 (Qld).

Decision to prosecute

The Insurance Commissioner's decision to prosecute is made with regard to the evidence, the law and the Guidelines published by the Director of Public Prosecutions Queensland. A two-tier test applies:

- **Whether there is sufficient evidence to prove the elements of the specific offence.** *There must be a reasonable prospect of a conviction before a Magistrate. Consideration will be given to factors such as any lines of defence, admissibility of evidence and credibility of witnesses.*
- **Whether it is in the public interest to prosecute.** *The Insurance Commissioner must, for example, consider if the offence is serious, the prevalence of the alleged offence, the attitude of the accused and the degree of culpability of the alleged offender in connection with the offence. There are also other considerations such as the alleged offender's age, health, ability to understand the English language, culture, background and criminal history.*

The above considerations are not exhaustive. The weight given to and relevance of the above factors will depend on the circumstances of each case. The decision and discretion to prosecute lies with the Insurance Commissioner to exercise the powers ethically, responsibly, consistently and on a case-by-case basis.

Charge negotiations

The public interest supports a conviction of the guilty and accordingly, the most efficient conviction is a plea of guilty. Early notice of the plea of guilty will maximise the benefits for the complainant and the community.

MAIC encourages early charge and plea negotiations that may result in a reduction of the level or the number of charges. This is a legitimate and important part of the criminal justice system throughout Australia. MAIC is focussed on achieving a just result and does not intend to 'over charge' with a view to later reducing the charge during negotiations.

Cooperation with MAIC

In accordance with the public interest, MAIC will consider leniency towards persons who voluntarily come forward with relevant evidence of conduct that contravenes the MAI Act or National Injury Act of which MAIC has either no knowledge of or insufficient evidence to justify further action.

This type of disclosure must be full and frank in relation to the conduct in question and, where possible, include submission of any documentary or other evidence that may be available or known to the discloser. There must also be an undertaking to cooperate throughout MAIC's investigation and to support any enforcement steps.

MAIC will exercise its discretion in relation to any voluntary disclosures on a case-by-case basis.

For more information, contact:

General Manager
Motor Accident Insurance Commission
Email maic@maic.qld.gov.au
Phone 1800 287 753