

Australian Capital Territory

Road Transport (Third-Party Insurance) Early Payment Guidelines 2013 (No 2)

Disallowable instrument DI2013–88

made under the

Road Transport (Third-Party Insurance) Act 2008, s 75A (Early Payment Guidelines)

1 Name of instrument

This instrument is the *Road Transport (Third-Party Insurance) Early Payment Guidelines 2013 (No 2)*.

2 Commencement

This instrument is to commence the day that the *Statute Law Amendment Act 2013* commences.

3 Revocation

I revoke instrument DI2013-5 being the Road Transport (Third-Party Insurance) Early Payment Guidelines 2013 (No 1).

4 Guidelines

I approve the following Guidelines for the early payment for medical treatment under Chapter 3 of the *Road Transport (Third-Party Insurance) Act 2008*.

Andrew Cappie-Wood
CTP Regulator
21 May 2013



ACT CTP Regulator

EARLY PAYMENT GUIDELINES

Section 75A of the *Road Transport (Third-Party Insurance) Act 2008*

1. INTRODUCTION

The purpose of these Guidelines is to provide guidance regarding the application of the early payment for medical expenses entitlement under the ACT Road Transport Third-Party Insurance legislation.

Specifically, this material is designed to guide insurers in how to administer the early payment scheme.

2. STATUTORY REGIME

Chapter 3 of the *Road Transport (Third-Party Insurance) Act 2008* makes provision for the early payment of medical expenses to a person injured in a motor accident.

The legislative framework of the early payment scheme includes:

- i. *Road Transport (Third-Party Insurance) 2008 Act* [‘the Act’]
- ii. *Road Transport (Third-Party Insurance) Regulation 2008* [‘the Regulations’]; and
- iii. These guidelines.

For the avoidance of doubt, the meaning of any defined terms used in the Act or Regulation are consistently applied in this document.

3. OBJECTIVES OF THE PAYMENT

Chapter 3 of the Act allows an injured person to claim up to \$5,000 for medical expenses reasonably incurred within 6 months of the motor accident.

Under section 185 of the Act, it is a condition of a CTP insurer licence that the licensed insurer must comply with section 73 of the Act in regards to payment for these medical expenses.

This entitlement to early payment for medical expenses aligns with the objects set out in section 5A of the Act. By minimising monetary barriers, the early payment scheme ought to provide earlier access to treatment and a greater focus on health outcomes and rehabilitation.

Evidence suggests that the earlier injuries are treated, the more likely injured persons will be able to fully recover from their injuries. Accordingly, an injured person can commence rehabilitation and other related medical services soon after the injury occurs, regardless of whether they are pursuing a compensation claim.

4. EARLY PAYMENT

4.1 Application

In order for an injured person to be entitled to early payment for their medical expenses, section 72 of the Act requires an injured person to provide a Motor Accident Notification Form ('MANF') and a police report to their insurer no later than 30 working days¹ after the motor accident. If an injured person is under a legal disability then the 30 working day period for submitting an application begins once the legal disability ends. However, the injured person or someone acting on their behalf is not prevented from submitting an application or complying with the early payment provisions under the Act while the injured person is under the legal disability.

For the purposes of the early payment the definition of a person under a legal disability is found in the *Limitation Act 1985 (ACT)*. For the purposes of the early payment, a person's insurer is:

- i. the CTP insurer for the person if they are a CTP insured person; or
- ii. the nominal defendant if they are not a CTP insured person.

If an injured person has applied for a police report but it has not been received within 30 working days after the motor accident then alternatively they may provide the MANF with a statement stating the date when the accident was reported and:

- i. the name and rank of the police officer to whom the accident was reported; or
- ii. the submission number for the report; and

¹ For the purposes of the Guidelines the term 'working day' is consistent with Part 1 of the Dictionary in the *Legislation Act 2001* where a 'working day' is defined as a day that is not a Saturday or a Sunday or a public holiday in the ACT.

once the injured person receives the police report they must provide it to the insurer within 14 days of receiving it.

The MANF should include a declaration by or for the person that the motor accident was not caused wholly or mainly by the fault of the person.

4.2 Payment

The insurer must pay the injured person the amount claimed (up to \$5,000) upon verification of the account or receipt provided by the injured person in respect of the medical expenses they have incurred or are to incur. The account or receipt provided by the injured person must include the information prescribed by section 19 of the Regulations. The Regulations require that an account or receipt include the following details:

- i) When the medical expenses were incurred;
- ii) When the account was issued;
- iii) The amount of the medical expenses;
- iv) The name and address of the medical provider for the account; and
- v) The goods or services obtained for the medical expense.

To further clarify, an account or receipt, as required by the Regulations, must be a tax invoice. A medical provider, for an account or receipt for medical expenses, means the person to whom payment for the medical expenses was, or is to be, made.

Guideline: Within 10 working days of receiving an early payment application, the insurer must:

- Verify the application by assessing the account or receipt; and
- Decide to pay the amount claimed and make the payment; or
- Decide not to pay the amount claimed and communicate that decision with brief reasons to the person applying for the early payment.

If the injured person has provided an account or receipt for their medical expenses that fulfils the requirements and is able to show a causal link between the accident and the expenses incurred or to be incurred then an insurer must not restrict or attempt to restrict the kind of medical treatment an injured person can claim.

4.3 Amount payable

The maximum amount an insurer is required to pay under the early payment provisions is \$5,000 or higher if determined by the CTP Regulator. A determination is a disallowable instrument.

If two or more injured persons were injured in the same motor accident, the maximum amount of medical expenses payable under the early payment provisions applies to each such person and is not reduced by the early payment of the medical expenses of the other injured people.

Guidance: An insurer may make payments for a person's medical expenses in addition to the maximum amount of early payment for medical expenses prescribed by the Act or determination.

5. EXPENSES PAYABLE

Section 73 of the Act defines what medical expenses insurers are required to pay, being expenses:

- i. Incurred within 6 months after the day the motor accident happened; and
- ii. Reasonably incurred because of the personal injury caused by the motor accident.

In order to demonstrate an expense was 'reasonably incurred' the person applying for early payment must show that the expense on medical treatment relates directly to injuries caused by the accident.

Examples of appropriate medical expenses would normally include the cost of an initial consultation with a medical provider for the purpose of completing the Motor Accident Medical Report (MAMR). Appropriate medical expenses would also include reasonable hospital, medical, rehabilitation and pharmaceutical expenses as well as reasonable attendant care and respite care. The early payment is intended to cover an injured persons medical expenses and does not cover legal expenses.

Guideline: In accordance with section 73(3) of the Act, the insurer must not restrict or attempt to restrict the kind of medical treatment an injured person receives. This includes applying criteria such as 'reasonable and necessary' used in the ordinary claims process.

6. LIABILITY

Section 75 of the Act confirms that any payment made by an insurer in relation to Part 3.2 of the Act is not an admission of liability in relation to the motor accident and does not in any way prejudice or affect a claim or proceeding arising out of the motor accident.

Consistent with the intention of the early payment scheme, the issue of liability is secondary to the early payment being made expeditiously.

Guideline: An insurer may make an early payment for medical expenses in relation to a motor accident whether or not the insurer has accepted liability in relation to a motor accident claim arising from the accident and whether or not a motor accident claim has been made against an insured person in relation to the motor accident.

6.1 Fault

In considering the criteria that the accident ‘was not caused wholly or mainly by the fault of the person’ under section 72(1)(c) of the Act an insurer should consider the overarching objectives of the early payment scheme when making determinations on applications for early payment. Specifically, that the early payment is designed to provide earlier access to treatment and facilitate a faster return to health for injured people.

Guideline: As a guide, any person who is not charged with a *serious traffic offence* would be entitled to the early payment.

A *serious traffic offence* is an offence under the ACT road transport legislation that is punishable by imprisonment for six months or more. For the purposes of the early payment scheme the conduct amounting to the serious traffic offence must have contributed materially to the person’s injury. Schedule 1 to these guidelines lists those offences characterised as serious traffic offences.

7. DISPUTES

Disputes may arise regarding whether an injured person is entitled to early payment for medical expenses. Section 14A(a) of the Act grants the CTP Regulator the power to regulate the licensing of insurers operating under the compulsory third-party insurance scheme and to supervise insurers. Section 185(1)(d) of the Act makes it a condition of a CTP insurer licence that the licensed insurer must comply with section 73 of the Act which relates to the expenses payable under the early payment scheme.

An insurer must also inform the injured person making an application for early payment that they may request the CTP Regulator to review the decision made by the insurer if they are not satisfied with the way the insurer has handled the application.

Guideline: An injured person should use all reasonable endeavours to resolve a dispute regarding the early payment with the insurer. If an injured person is not satisfied with attempts to resolve the dispute they may request the CTP Regulator to review decisions made by the insurer regarding their application for early payment.

8. COST OFFSET

An insurer may offset its costs in paying the \$5,000 early payment to a claimant against any subsequent award of damages to that claimant.

The effect of cost offsetting is that an assessment of damages will take into account any money already paid to the claimant by the insurer as part of the early payment as part of the final damages amount.

9. REPORTING REQUIREMENTS

In line with section 14A of the Act, the CTP Regulator is responsible for insurer regulation. Accordingly, the CTP Regulator is empowered to monitor the management of claims by licensed insurers and compliance with their obligations under the Act.

The provision of information relating to the early payment scheme to the CTP Regulator will assist with the development and support of programs, research, resources and guidelines that will assist effective injury management.

Guideline: Insurers must provide the CTP Regulator with information relating to early payment applications.

The insurer must provide the following details in relation to each early payment application:

- i. Whether the application was approved;
- ii. If payable, how much did the insurer pay to the injured person;
- iii. If the insurer rejects the application, the reason the application was rejected; and
- iv. The time taken to process the application.

The insurer must provide this information to the CTP Regulator through the Personal Injury Register (PIR) as part of reporting requirements under the Act. Early payment information is to be reported even if the injured person does not proceed to claim for compensation beyond the early payment.

Schedule 1

Serious Traffic Offences for the purposes of the Early Payment Guidelines

Section	Offence description	Penalty (Penalty units (pu)/ imprisonment)
Road Transport (Alcohol and Drugs) Act 1977		
19 (1) Special driver, first offender	special driver drive motor vehicle on road/related area with level 3 or more alcohol in blood—first offender	10 pu/6 months prison/both
19 (1) Special driver, repeat offender	special driver drive motor vehicle on road/related area with level 3 or more alcohol in blood—repeat offender	10 pu/6 months prison/both
19 (1) Special driver, first offender	special driver drive motor vehicle on road/related area with level 4 or more alcohol in blood—first offender	15 pu/9 months prison/both
19 (1) Special driver, repeat offender	special driver drive motor vehicle on road/related area with level 4 or more alcohol in blood—repeat offender	20 pu/12 months prison/both
19 (1) first offender	drive motor vehicle on road/related area with level 3 or more alcohol in blood—first offender	10 pu/6 months prison/both
19 (1) repeat offender	drive motor vehicle on road/related area with level 3 or more alcohol in blood—repeat offender	10 pu/6 months prison/both
19 (1) special driver, first offender	drive motor vehicle on road/related area with level 4 or more alcohol in blood—first offender	15 pu/9 months prison/both
19 (1) special driver, repeat offender	drive motor vehicle on road/related area with level 4 or more alcohol in blood—repeat offender	20 pu/12 months prison/both
22 (c) first offender—driver	refuse to provide breath sample—first offender	30 pu/6 months prison/both
22 (c) first offender—driver trainer	refuse to provide breath sample—first offender	30 pu/6 months prison/both
22 (c) repeat offender—driver	refuse to provide breath sample—repeat offender	30 pu/12 months prison/both
22 (c) repeat offender—driver trainer	refuse to provide breath sample—repeat offender	30 pu/12 months prison/both
22 (d) first offender—driver	fail/refuse to provide breath sample in accordance with reasonable directions of police officer—first offender	30 pu/6 months prison/both
22 (d) first offender—driver trainer	fail/refuse to provide breath sample in accordance with reasonable directions of police officer—first offender	30 pu/6 months prison/both
22 (d) repeat offender—driver	fail/refuse to provide breath sample in accordance with reasonable directions of police officer—repeat offender	30 pu/12 months prison/both
22 (d) repeat offender—driver trainer	fail/refuse to provide breath sample in accordance with reasonable directions of police officer—repeat offender	30 pu/12 months prison/both
22A (2) (a) first offender—driver	refuse to provide sample of oral fluid for analysis—first offender	30 pu/6 months prison/both
22A (2) (a) first offender—driver trainer	refuse to provide sample of oral fluid for analysis—first offender	30 pu/6 months prison/both
22A (2) (a) repeat offender—driver	refuse to provide sample of oral fluid for analysis—repeat offender	30 pu/12 months prison/both

22A (2) (a) repeat offender— driver trainer	refuse to provide sample of oral fluid for analysis—repeat offender	30 pu/12 months prison/both
22A (2) (b) first offender—driver	fail to provide sample of oral fluid in accordance with reasonable directions of police officer—first offender	30 pu/6 months prison/both
22A (2) (b) first offender — driver trainer	fail to provide sample of oral fluid in accordance with reasonable directions of police officer—first offender	30 pu/6 months prison/both
22A (2) (b) repeat offender— driver	fail to provide sample of oral fluid in accordance with reasonable directions of police officer—repeat offender	30 pu/12 months prison/both
22A (2) (b) repeat offender— driver trainer	fail to provide sample of oral fluid in accordance with reasonable directions of police officer—repeat offender	30 pu/12 months prison/both
23 (1) first offender—driver	fail/refuse to permit blood sample to be taken—first offender	30 pu/6 months prison/both
23 (1) first offender—driver trainer	fail/refuse to permit blood sample to be taken—first offender	30 pu/6 months prison/both
23 (1) repeat offender— driver	fail/refuse to permit blood sample to be taken—repeat offender	30 pu/12 months prison/both
23 (1) repeat offender— driver trainer	fail/refuse to permit blood sample to be taken—repeat offender	30 pu/12 months prison/both
23 (2) first offender—driver	behave in manner so impossible/impractical for blood sample to be taken—first offender	30 pu/6 months prison/both
23 (2) first offender—driver trainer	behave in manner so impossible/impractical for blood sample to be taken—first offender	30 pu/6 months prison/both
23 (2) repeat offender— driver	behave in manner so impossible/impractical for blood sample to be taken—repeat offender	30 pu/12 months prison/both
23 (2) repeat offender— driver trainer	behave in manner so impossible/impractical for blood sample to be taken—repeat offender	30 pu/12 months prison/both
23 (3) (a) first offender—driver	fail/refuse to submit to medical examination—first offender	30 pu/6 months prison/both
23 (3) (a) first offender—driver trainer	fail/refuse to submit to medical examination—first offender	30 pu/6 months prison/both
23 (3) (a) repeat offender— driver	fail/refuse to submit to medical examination—repeat offender	30 pu/12 months prison/both
23 (3) (a) repeat offender— driver trainer	fail/refuse to submit to medical examination—repeat offender	30 pu/12 months prison/both
23 (3) (b) first offender—driver	fail/refuse to give/permit taking of body sample—first offender	30 pu/6 months prison/both
23 (3) (b) first offender — driver trainer	fail/refuse to give/permit taking of body sample—first offender	30 pu/6 months prison/both
23 (3) (b) repeat offender— driver	fail/refuse to give/permit taking of body sample —repeat offender	30 pu/12 months prison/both
23 (3) (b) repeat offender— driver trainer	fail/refuse to give/permit taking of body sample —repeat offender	30 pu/12 months prison/both
24(1)	drive vehicle on road/related area under influence of intoxicating	30 pu/6 months

first offender	liquor/drug incapable of proper control of vehicle— first offender	prison/both
24(1) repeat offender	drive vehicle on road/related area under influence of intoxicating liquor/drug incapable of proper control of vehicle— repeat offender	30 pu/12 months prison/both
24A(1)	drive/ride/be in charge of vehicle/animal on road under influence of alcohol	50 pu/6 months prison/both
Road Transport (Driver Licensing) Act 1999		
31(2) repeat offender	unlicensed driver/rider—repeat offender	50 pu/6 months prison/both
32 (1) (a) first offender	drive while disqualified—first offender	50 pu/6 months prison/both
32 (1) (a) repeat offender	drive while disqualified—repeat offender	100 pu/12 months prison/both
32 (1) (b) first offender	apply for licence while disqualified state name falsely/incorrectly/not mention disqualification—first offender	50 pu/6 months prison/both
32 (1) (b) repeat offender	apply for licence while disqualified state name falsely/incorrectly/not mention disqualification—repeat offender	100 pu/12 months prison/both
32 (2) (a) first offender	drive while licence suspended—first offender	50 pu/6 months prison/both
32 (2) (a) repeat offender	drive while licence suspended—repeat offender	100 pu/12 months prison/both
32 (2) (b) first offender	apply for licence while suspended state name falsely/incorrectly/not mention suspension—first offender	50 pu/6 months prison/both
32 (2) (b) repeat offender	apply for licence while suspended state name falsely/incorrectly/not mention suspension—repeat offender	100 pu/12 months prison/both
32 (3) (a) first offender	drive while licence cancelled/after licence refused—first offender	50 pu/6 months prison/both
32 (3) (a) repeat offender	drive while licence cancelled/after licence refused—repeat offender	100 pu/12 months prison/both
32 (3) (b) first offender	apply for licence after refusal/cancellation state name falsely/incorrectly/not mention refusal/ cancellation—first offender	50 pu/6 months prison/both
32 (3) (b) repeat offender	apply for licence after refusal/ cancellation state name falsely/incorrectly/not mention refusal/ cancellation—repeat offender	100 pu/12 months prison/both
33 (1)	contravene conditions of restricted licence	50 pu/6 months prison/both
Road Transport (General) Act 1999		
231	hinder/obstruct police officer/authorised person/other person	50 pu/6 months prison/both
Road Transport (Mass, Dimensions and Loading) Act 2009		
142 (1)	consignor—severe risk breach of mass requirement—intention	200pu/ 6 months prison/both
142 (2)	consignor—severe risk breach of mass requirement—recklessness	150pu/6 months prison/both
145 (1)	consignor—severe risk breach of dimension/loading requirement—intention	200pu/ 6 months prison/both
145 (2)	consignor—severe risk breach of dimension/loading requirement—recklessness	150pu/6 months prison/both
147 (1)	packer—severe risk breach of mass requirement—intention	200pu/6 months prison/both
147 (2)	packer—severe risk breach of mass requirement—recklessness	150pu/6 months prison/both
150 (1)	packer—severe risk breach of dimension/loading requirement—intention	200pu/ 6 months prison/both
150 (2)	packer—severe risk breach of dimension/loading requirement—recklessness	150pu/6 months prison/both
152 (1)	loader—severe risk breach of mass requirement—intention	200pu/6 months prison/both
152 (2)	loader—severe risk breach of mass requirement—recklessness	150pu/6 months

		prison/both
154 (1)	loader—severe risk breach of dimension/loading requirement— intention	200pu/6 months prison/both
154 (2)	loader—severe risk breach of dimension/loading requirement— recklessness	150pu/6 months prison/both
156 (1)	operator—severe risk breach of mass requirement—intention	200pu/6 months prison/both
156 (2)	operator—severe risk breach of mass requirement—recklessness	150pu/6 months prison/both
158 (1)	operator—severe risk breach of dimension/loading requirement— intention	200pu/6 months prison/both
158 (2)	operator—severe risk breach of dimension/loading requirement— recklessness	150pu/6 months prison/both
160 (1)	driver—severe risk breach of mass requirement—intention	200pu/6 months prison/both
160 (2)	driver—severe risk breach of mass requirement—recklessness	150pu/6 months prison/both
162 (1)	driver—severe risk breach of dimension/loading requirement— intention	200pu/6 months prison/both
162 (2)	driver—severe risk breach of dimension/loading requirement— recklessness	150pu/6 months prison/both
163 (1)	consignee engage in conduct resulting/likely to result in inducing/rewarding breach of mass/dimension/loading requirement— intention	200pu/6 months prison/both
163 (2)	consignee engage in conduct resulting/likely to result in inducing/rewarding breach of mass/dimension/loading requirement— recklessness	150pu/ 6 months prison/both
501 (2) (a)	make record of protected information about someone else	50pu/6 months prison/both
501 (2) (b)	divulge protected information about someone else	50pu/6 months prison/both
Road Transport (Safety and Traffic Management) Act 1999		
6 (1)	negligent driving occasioning death	200 pu/24 months prison/both
6 (1)	negligent driving occasioning grievous bodily harm	100 pu/12 months prison/both
7 (1)	drive furiously/recklessly/at speed dangerous/in way dangerous	100 pu/12 months prison/both
8 (1)	drive with intent to menace	100 pu/12 months prison/both
8 (2)	drive knowing other may be menaced	100 pu/12 months prison/both
12	knowingly drive/stand unsafely loaded vehicle causing death/injury/damage	50 pu/6 months prison/both
13 (1)	responsible person for unsafely loaded vehicle causing death/injury/damage	50 pu/6 months prison/both
13 (2)	director/manager of corporation responsible person for unsafely loaded vehicle causing death/injury/damage	50 pu/6 months prison/both
16	not stop/give assistance after accident causing death/injury	200 pu/2 years prison/both
Road Transport (Third-Party Insurance) Act 2008		
116 (1)	knowingly make false/misleading statement	100pu/1 year prison/both
116 (2)	recklessly make false/misleading statement	50pu/6 months prison/both
233	contravene court order made to protect interests of CTP policy holders	20 pu/6 months prison/both

271 (2) (a)	make record of protected information about someone else	50pu/6 months prison/both
271 (2) (b)	divulge protected information about someone else	50pu/6 months prison/both
Road Transport (Vehicle Registration) Act 1999		
20 (a)	forge/fraudulently change/use/lend/allow to be used registration device/plate/document	50 pu/6 months prison/both
20 (b)	knowingly possess forged/fraudulently changed registration device/plate/document	50 pu/6 months prison/both
20 (c)	possess false registration device/plate/document calculated to deceive	50 pu/6 months prison/both
23 (2) (a)	unlawfully stamp/attach vehicle identification number	50 pu/6 months prison/both
23 (2) (b)	unlawfully change/deface/remove/obliterate identification number	50 pu/6 months prison/both
23 (2) (c)	unlawfully possess part of vehicle knowing identification number is changed/defaced/removed/obliterated	50 pu/6 months prison/both