

Australian Capital Territory

# Motor Accident Injuries (Internal Review) Guidelines 2019

Disallowable instrument DI2019–244

made under the

**Motor Accident Injuries Act 2019, section 487 (MAI guidelines)**

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## **1 Name of instrument**

This instrument is the *Motor Accident Injuries (Internal Review) Guidelines 2019*.

## **2 Commencement**

This instrument commences on the commencement of the *Motor Accident Injuries Act 2019*, section 3.

## **3 Guidelines**

I make the Internal Review guidelines attached to this instrument.

Lisa Holmes  
MAI Commissioner  
MAI Commission

31 October 2019

# Internal Review Guidelines

## 1. INTRODUCTION

The internal review guidelines (guidelines) are part of the MAI guidelines made under section 487 of the Motor Accident Injuries Act 2019 (MAI Act). The purpose of the guidelines is to make provision for matters in relation to applications and provide advice about applications and the conduct of internal reviews for decisions about defined benefit entitlements.

An insurer's duty to act in good faith (see section 20 of the MAI Act) includes a duty to give an applicant written reasons for all decisions that have a material effect on an entitlement to defined benefits and to tell an applicant about the right of review of a decision of an insurer. An insurer should therefore have their own procedures to identify and provide reasons for all internally reviewable decisions not made in an applicant's favour, and to inform applicants about seeking an internal review of an internally reviewable decision.

These guidelines are not intended to be exhaustive. Internal review is to operate together with other procedures an insurer has in place to manage complaints as part of the insurer's MAI licence. The adoption of simple and accessible arrangements by an insurer for the making of complaints, together with timely responses or resolution, may avoid a person needing to apply for an internal review of a decision.

## 2. STATUTORY FRAMEWORK

Division 2.10.2 of the MAI Act enables a person to apply for the internal review of a decision the insurer has made about an application for defined benefits. A table detailing the decisions that are internally reviewable decisions is set out in Part 1.1, Schedule 1 of the MAI Act. A regulation may also prescribe decisions that are internally reviewable decisions. The table covers a range of decisions an insurer must make in relation to an application for defined benefits including about accepting liability for an application, assessing entitlements to defined benefits such as treatment and care expenses and calculating the amount of any defined benefit.

MAI guidelines may make provision for the period to make a late application for an internal review, applications for and the conduct of the internal review, and circumstances for extending the period to make a review decision.

The legislative framework for the internal review of decisions about defined benefit includes:

- the MAI Act;
- the Motor Accident Injuries Regulation 2019 (the Regulation); and
- these Guidelines.

### **3. GUIDELINES – Late applications – (Section 187)**

**3.1** Subsection 187(3) of the MAI Act allows a late application for the internal review of a decision to be made after 28 days from the date of an internally reviewable decision, if the applicant satisfies an insurer that they have a full and satisfactory explanation for the delay and the guidelines provide for the late application to be made within a longer period. The late application must then be made within the longer period.

**3.2** These guidelines specify the longer period as 14 days, after an insurer makes a decision that given the full and satisfactory explanation and the circumstances of the delay that a longer period should apply.

**3.3** The longer period should only apply if the full and satisfactory explanation for the delay is consistent with the main objects of the MAI Act, such as the object to promote and encourage the quick, cost effective and just resolution of disputes.

**3.4** For example, it would be appropriate to apply a longer period to an application that relates to an issue or complaint that the applicant has previously taken steps to resolve with the relevant insurer. This could include matters the applicant has raised informally with their usual contact at the insurer (such as through an email or telephone call with an applications manager) or through any other arrangements the insurer has in place to manage complaints. This will encourage applicants to first raise any issues or complaints about decisions directly with an insurer and avoid many relatively simple matters, such as errors in calculations, being progressed through internal review.

**3.5** To streamline the process for making a late application, the applicant should provide both the full and satisfactory explanation for their delay together with an application for the decision to be reviewed. This is intended to ensure there is no delay between the insurer making a decision on whether the longer period applies and the decision to accept the internal review application.

### **4. GUIDELINES – Conduct of internal review – (Section 188)**

These guidelines make provision for applications for internal review and the conduct of an internal review by an insurer.

#### **4.1 Applying for an internal review**

**4.1.1** An application for an internal review should be made in writing to an insurer. The application may be given to an insurer through the post or by electronic means and may also be lodged using an on line application process (if provided by the insurer). The application should include:

- name and contact details of the applicant;
- the decision of an insurer being requested for an internal review (noting this may include several decisions of a related type);
- the date of the decision (or if not known, the approximate date);
- brief details of issues for review - elements of the original decision the applicant wishes to be reviewed;

- reason(s) the applicant believes the decision made should be changed, and;
- any additional information or documents the applicant considers relevant to a review of the decision.

**4.1.2** If the application is a late application, a full and satisfactory explanation for a delay is to be given to the insurer together with the application.

**4.1.3** An application for an internal review may be withdrawn by an applicant at any time prior to an internal review decision being made. An insurer is to confirm the withdrawal of an application in writing.

## **4.2 Actions an insurer must take on receiving an application**

**4.2.1** An insurer that receives an application for internal review must give the applicant a confirmation notice for the application within 3 business days of the application being received. The notice is to be given in writing and may be given by electronic means or by post. For the purposes of these guidelines a notice will be taken to be given on the day it is posted by the insurer, and not on the day it would have been delivered to the applicant.

**4.2.2** The notice is to include the following information:

- the decision or elements of a decision covered by the application;
- the date the application for internal review was received;
- whether or not the insurer has accepted the application for internal review;
- if, the insurer has accepted the application, the date a review decision is expected or required;
- if the application is declined, brief reasons for this decision and details of any options available to the applicant if they do not agree with decision;
- details of how to contact the insurer about the internal review.

**4.2.3** An application for an internal review may be declined if the application is for a matter, or an element of a matter, that is not an internally reviewable decision, an application is made outside application time frames, an insurer is not satisfied with the full and satisfactory explanation for the delay in making an application, or the circumstances for a late application are not in accordance with these guidelines.

**4.2.4** If an insurer accepts an application and subsequently determines a matter is not an internally reviewable decision, then the insurer should advise the applicant, in writing, as soon as practicable the application for internal review has been declined.

**4.2.5** An insurer should also contact the applicant, as soon as practicable, after receiving an application if clarification is required about any element of the original decision that is to be subject to a review, or to request any additional information or documents reasonably required for the review.

### **4.3 Individual conducting the review**

A review must be conducted by an individual appointed by the insurer who:

- has the required skills, experience, knowledge, training, and capacity to conduct the internal review in accordance with the main objects of the MAI Act, and the duties and obligations of an insurer under the MAI Act; and
- was not involved in making or advising on the decision subject to the review or was not the direct supervisor/manager of a person involved in making or advising on the decision subject to review.

### **4.4 Conducting an internal review**

**4.4.1** An internal review is to be conducted in a manner that best supports the main objects of the MAI Act having regard to the personal circumstances and any special needs of an applicant, and the facts and circumstances that gave rise to the application for the review. This may include a document review, informal discussions with an applicant, a teleconference, a video conference or a face to face meeting, as appropriate.

**4.4.2** An internal review should be conducted as informally as possible, having regard to the insurer's own procedures, including procedures for documentary evidence and inquiries into matters relevant to the issues under review. A notice of a decision should be provided in plain English, and is to include reasons for the insurer's decision and information, if relevant, about how the applicant may apply for an external review of the decision.

#### **Information to be considered for a review**

Section 187 of the MAI Act requires an applicant to give the insurer the information an insurer requests and reasonably requires for the internal review.

An internal reviewer may also consider any information not provided before the decision being reviewed was made (see section 187).

#### **Costs for an internal review decision**

An insurer is not liable for the costs of the applicant in making an internal review application. This includes any legal services sought for the application.

An insurer must not impose any fees or costs on an applicant for the conduct of an internal review.

## **5. GUIDELINES - Internal review decision – (Section 191)**

**5.1** These guidelines make provision for the particular circumstances for extending the date of an internal review decision. Under section 191 of the MAI Act an insurer must within 10 business days of receiving an application for internal review, either affirm, amend or set aside the decision.

**5.2** The following circumstances apply for extending the period of 10 business days for an internal review decision:

- an extension of 5 business days applies if the insurer considers any additional information or documents that were not available at the time of the decision being reviewed. This may include information given to the insurer by the applicant at the time of the application alongside any other new information the insurer considers as part of the review;
- an extension of 10 business days applies if the insurer has requested additional information or documents from an applicant. The time applies from when the insurer receives the requested information;
- an extension of 10 business days applies if the applicant has requested additional information or a document from a third party to support an application. The time applies from when the insurer receives the requested information. In these circumstances an applicant must tell the insurer about the request to the third party.

**5.3** The insurer should advise the applicant as soon as practicable that the extension is in effect.