

Australian Capital Territory

Motor Accident Injuries (Quality of Life Benefit) Guidelines 2019

Disallowable instrument DI2019–246

made under the

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

1 Name of instrument

This instrument is the *Motor Accident Injuries (Quality of Life Benefit) Guidelines 2019*.

2 Commencement

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

3 Guidelines

I make the Quality of Life Benefit Guidelines attached to this instrument.

Lisa Holmes
MAI Commissioner
MAI Commission

31 October 2019

Quality of Life Benefit Guidelines

1. INTRODUCTION

The Quality of Life Benefit 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 provide guidance about applications and offers for quality of life defined benefit amounts.

Specifically, this material advises insurers of their obligations in providing information and support to potential applicants for Quality of Life benefits, procedures for arranging Whole Person Impairment (WPI) assessments and making offers for quality of life defined benefit amounts.

2. STATUTORY FRAMEWORK

Division 2.6.2 of the MAI Act makes provision for an injured person to make a quality of life benefits application. A precondition for the application is that the injured person has received a receipt notice or late receipt notice under section 60. An injured person cannot make a quality of life benefit application earlier than 26 weeks after a motor accident and not later than 4 years and six months after an accident.

The legislative framework for quality of life defined benefits includes:

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

3. GUIDELINES – INFORMATION AND SUPPORT FOR APPLICANTS FOR QUALITY OF LIFE BENEFITS

3.1 These guidelines make provision for the information and support an insurer is to give a person about making an application for quality of life benefits for the purposes of paragraph 52(2)(e) of the MAI Act. The information pack is intended to assist an injured person in making an informed decision about requesting a WPI assessment.

3.2 The information pack is required to be provided about:

- the eligibility requirements for a quality of life defined benefit or to make a motor accident claim;
- how to apply for a quality of life benefit, and the time frame for making an application;
- the need for a person's injuries to be stable for a permanent impairment to be assessed;
- conditions for requesting a WPI assessment for primary/secondary psychological injuries;

- how an insurer will arrange for an assessment with an independent medical examiner, expected waiting times for an assessment and the person's obligations if they request an assessment;
- how a WPI assessment is carried out and where a person can access the MAI guidelines about permanent impairment assessments; and
- arrangements for paying for a WPI assessment, including the circumstances a person will be required to pay an excess for an assessment and the circumstances in which an excess can be returned.

3.3 An insurer must provide an information pack about quality of life payments, no earlier than 24 weeks after the date of an accident to any applicant for defined benefits who is likely to be entitled to a quality of life benefit payment. Where the period of 24 weeks after the date of the accident has passed, for example a late application is made and accepted, the insurer should provide the information pack after the insurer has accepted liability for the application.

3.4 An insurer must consider their duty to act in good faith when determining the timing of the issue of an information pack. This includes the insurer's duty in paragraph 20(4)(a) of the MAI Act to disclose, as soon as practicable, all information that an applicant may need to understand the process for applying for defined benefits. An insurer therefore must not delay the issue of an information pack unless the insurer has information that a person's injuries are not stable.

3.5 The information pack must also be provided on request by any other person who has made a defined benefits application. Information packs may be sent electronically or by post.

3.6 An insurer does not need to provide an information pack when a person:

- was charged with a serious driving offence or two or more driving offences;
 - is a foreign national and has permanently departed Australia;
- or if -**
- the insurer has denied liability for the person's defined benefit application; or
 - the person returned to work at full capacity or their usual activities within 28 days after the motor accident.

4. GUIDELINES – QUALITY OF LIFE BENEFITS APPLICATION

4.1 For the purposes for paragraph 137(3)(b) of the MAI Act a quality of life defined benefits application must include the following details:

- name of the injured person;
- the individual claim identifier provided by the insurer;
- the types of injuries for which an assessment is being sought being physical and/or primary psychological;
- details of the person's availability on weekdays for an assessment in the next three months;
- details of any special needs of the person in attending an assessment – such as accessibility, cultural or language needs;

- whether the person requires an accompanying person to be present at the assessment together with the name, relationship and role of this person;
- information about any offence the person has been charged with, or convicted or found guilty of, in relation to the accident.

4.2 For the purposes of paragraph 137(3)(c) of the MAI Act a quality of life defined benefits application for a person requesting a primary psychological assessment must be accompanied by a written notice from a psychiatrist, or clinical psychologist in accordance with subsection 150(3) of the MAI Act.

4.3 The following information may also accompany a quality of life benefits application but is not a mandatory part of the application. This information may also be subsequently requested by an insurer if the insurer has inconclusive information about the status of a person's injuries in accordance with section 6.1 of these guidelines.

- any medical reports about the status of the person's injuries that have not been provided directly to an insurer by a treating health practitioner of the injured person.
 - This could include any reports about whether a person's injuries are stable or whether a person is likely to have a permanent impairment.

4.4 A quality of life benefits application may be made using a prescribed form made available on the MAI Commission's website or provided by an insurer. The application is to be made in writing, and may be given to the insurer by electronic means, by personal delivery or by post.

5. GUIDELINES – APPLICATION FOR A WPI ASSESSMENT FOR A PERSON THAT HAS MADE A SUCCESSFUL WORKERS COMPENSATION CLAIM

5.1 Under Part 5.3 of the MAI Act a person that has made a successful application for workers compensation benefits and has lodged a notice of claim under common law, may apply to an insurer for the motor accident claim for an assessment of their WPI.

5.2 The application should include information about the WPI assessments the injured person is seeking. The application should also be accompanied by an authority to disclose personal health information that covers the exchange of personal health information between:

- the motor accident insurer,
- the injured person's stated workers compensation insurer (if applicable),
- treating health service providers or a treating team,
- an authorised IME provider, and
- an independent medical examiner who conducts a WPI assessment.

5.3 For the purposes of subsection 241(2) of the MAI Act, an insurer must give an acknowledgement notice to the injured person within 5 business days of receiving the application for a WPI assessment.

6. GUIDELINES – PROCEDURE FOR ARRANGING A WPI ASSESSMENT

These guidelines make provision for the procedures for arranging a WPI assessment under section 147 of the MAI Act.

6.1. Status of a person's injuries

6.1.1 An insurer must refer an injured person to an authorised IME provider for a WPI assessment if the insurer “reasonably believes” that the person’s injuries have stabilised and the person is likely to have a permanent impairment as a result of the injuries.

6.1.2 If an insurer believes a person’s injuries are stable but they do not have a permanent impairment, they must only refer the person for a WPI assessment if the person pays an excess amount for the assessment to the insurer. If an insurer believes a person’s injuries have not stabilised an insurer must recommend to the person that a WPI assessment be delayed. In these circumstances an injured person may still request an immediate WPI assessment, but if the assessment confirms the person’s injuries are not stable an insurer is not obliged to pay for a second assessment.

6.1.3 If an injured person requests both a physical and a primary psychological assessment, an insurer should treat each WPI assessment as a separate assessment under Division 2.6.2 of the MAI Act.

6.1.4 For example, an insurer could reasonably believe that an applicant was likely to have a permanent primary psychological impairment but not a permanent physical impairment. In these circumstances an insurer would be required to refer the person for a WPI assessment for their psychological injuries and also give the person a notice about their physical injuries under section 139 of the MAI Act.

6.1.5 If the person has physical injuries to multiple body systems an insurer should also reasonably believe that injuries to all physical body systems have stabilised before making a WPI assessment referral. An insurer should also tell the injured person about any injuries that will not be assessed because they are not likely to result in a permanent impairment.

6.1.6 An insurer’s reasonable belief about the stability of a person’s injuries, and the likelihood of a permanent impairment should be based on information the insurer has in their possession about the person’s injuries and recovery following receipt of the application. If this information is inconclusive the insurer should make reasonable inquiries to the person’s treating health practitioners.

6.1.7 An insurer must rely on a notice given by a psychiatrist or clinical psychologist under subsection 150(3) of the MAI Act to form a reasonable belief about a person being likely to have a permanent primary psychological impairment.

6.2. The time within which a WPI assessment must be arranged

6.2.1 An insurer must determine whether it reasonably believes a person’s injuries have stabilised and the likelihood of a permanent impairment within 10 business days after receiving a completed quality of life benefits application. An insurer must then immediately

refer the person to an authorised IME provider for a WPI assessment for all injuries for which a person is likely to have a permanent impairment once the person:

- is eligible for an assessment under section 138 of the MAI Act, or
- confirms and pays an excess for a WPI assessment under subsection 139(3) of the MAI Act, or
- the person requests a WPI assessment under subsection 140(3) of the MAI Act, or
- the person notifies the insurer that their injuries have stabilised in accordance with subparagraph 141(5)(c)(ii) of the MAI Act.

6.2.2 A person's application for quality of life benefits is suspended for the period a charge with two or more driving offences, or a serious driving offence is outstanding. A referral to an IME provider should not be made during the suspension period, and the insurer should inform the applicant about the suspension of the application, and circumstances that the application may be revived, in writing.

6.3. Selecting an IME provider

6.3.1 An insurer must put procedures in place to ensure that all authorised IME providers are allocated referrals from an insurer on an equal and sequential basis. For example, if there are two authorised IME providers an insurer should alternate referrals for any given injured person, between the two providers, based on the time and date of a referral. The only exception to this rule should be if:

- the allocated provider is unable to provide an assessment for all body systems for the injured person,
- an injured person has previously received a physical or primary psychological assessment from another provider, or
- another provider operates in a location closer to where the injured person resides or works.

An insurer should keep a register of all referrals to authorised IME providers.

6.4. Arranging appointments with an independent medical examiner

6.4.1 An insurer must prepare a written referral to the authorised IME provider. The referral should detail the injuries and body systems to be covered by the WPI assessment report and whether the insurer has received either a notice or information for a diagnosis for a psychological or psychiatric disorder

6.4.2 If an assessment report is required for both physical and primary psychological injuries a separate referral should be prepared for each WPI assessment report. The referral should also indicate when a person is likely to be available for medical examinations and include details of any special needs, such as an interpreter services, that need to be accommodated for at an appointment.

6.4.3 The IME provider is responsible for arranging one or more independent medical examiners to carry out a WPI assessment of the injured person.

6.4.4 An insurer must also give the authorised IME provider and independent medical examiner all medical and allied health information, including results of clinical investigations in their possession relevant to the assessment at least 10 calendar days before an appointment with an examiner. Information should include information about the onset of injury, subsequent treatment, diagnostic imaging and tests, and functional assessments of the person claiming the impairment. All documents should be appropriately indexed and organised in a manner to minimise file review times by the examiner.

6.4.5 If the injured person has requested that an accompanying person be present at the assessment the referral should include the name, relationship to the injured person, and role of this person.

6.4.6 The insurer should consult directly with the applicant before confirming any appointments with an independent medical examiner.

6.4.7 An injured person must be given at least 10 business days written notice of any appointment with an independent medical examiner. The insurer is responsible for ensuring the appointment notice is given to the injured person. The notice period may only be reduced or waived on agreement from the injured person and provided the insurer has already given the independent medical examiner all information necessary to undertake an assessment. If a person has complex injuries a single notice may cover multiple appointments. The notice must include the following information about a given appointment:

- the name, specialty and qualifications of the independent medical examiner.
- the injuries and body system/s covered by the referral noting the appointment is for the purposes of assessing impairment and not for medical treatment.
- the date, time and location of the appointment, contact details for the examiner's offices and appropriate travel directions or arrangements.
- the likely duration of the appointment.
- how to cancel the appointment.
- the consequences of a late cancellation or a non-attendance for an appointment
- Information the injured person should bring to the appointment (such as X-rays not in electronic form) or give to the examiner prior to the appointment.
- arrangements for an accompanying person to be present during an appointment, noting that the person is not to participate in the assessment, other than to assist the examiner in communicating with the person, and any accompanying person may be asked to leave the assessment room if requested by an examiner. Where the injured person is a child or a person with an intellectual disability, the examiner may request the support person remain in the room but not communicate with the injured person if there is a concern they are interfering with the assessment.
- arrangements for paying travel expenses.
- how complaints can be made and how they will be handled.

A notice of an appointment may be sent to an injured person by post or electronically.

6.5. Payment for WPI assessment

6.5.1 An insurer will be responsible for directly paying an IME provider for a WPI assessment report and related costs requested on referral by an insurer. The IME provider will invoice in accordance with the fee schedule agreed by the MAI Commission. An IME provider must be paid within 10 business days of the insurer receiving a properly completed WPI report and invoice.

6.5.2 An insurer will not be required to make a referral for an assessment, or an appointment with an independent medical examiner, without receiving a payment or contribution for the cost of an assessment from an injured person in the following circumstances:

- the insurer believes a person's injuries are stable and the person is not likely to have a permanent impairment(Section 139 of the MAI Act;);
- a second assessment is required for a person, because an assessment requested by the person under subsection 140(3) of the MAI Act confirmed the person's injuries had not stabilised; or
- a second assessment is required under subparagraph 141(5)(c)(ii) of the MAI Act because a person who has received an estimated WPI has applied to stay common law proceedings, until their injuries have stabilised.

6.5.3 If an excess is paid by a person in accordance with subsection 139(5) of the MAI Act and the WPI assessment report confirms the person's WPI is greater than 0%, the insurer must reimburse the excess to the person within 10 business days of receiving the WPI assessment report.

6.5.4 If a further appointment is required with an independent medical examiner because a person did not attend an earlier appointment and did not give the insurer a reasonable excuse for their non-attendance, the person must pay any cancellation fee charged by the IME provider or IME as a result of the missed appointment.

6.5.5 An insurer must also pay the reasonable and necessary travel expenses for a person to attend a WPI assessment on referral from an insurer, with the exception of a referral for a second assessment required because an assessment requested by the person under subsection 140(3) of the MAI Act confirmed the person's injuries had not stabilised.

6.5.6 If an injured person arranges for a private medical examiner to carry out a second WPI assessment the person will be responsible for paying for the WPI assessment report and for any travel expenses incurred in attending the WPI assessment.

7. GUIDELINES – INFORMATION AND SUPPORT – WPI TAKEN TO BE 10% IN CERTAIN CIRCUMSTANCES

7.1 These guidelines make provision for information and support an insurer is obliged to give a person under paragraph 52(2)(f) of the MAI ACT who is taken under section 133 of the MAI Act to have a WPI of 10 per cent. A person who was a child at the time of an accident and at four years and six months after the motor accident is either receiving treatment and care meeting the requirements of the regulation, or a participant in the LTCS

scheme, will be taken to have a WPI of 10 per cent.

7.2 An insurer must identify any injured person that is taken to have a WPI of 10 per cent under section 133 of the MAI Act, and contact the person in writing (or a parent/guardian in the case of a minor) 1 month, prior to reaching 4 years and six months from the date of the motor accident. The insurer does not need to contact a person that has received a written notice under subsection 157(2) or 164(2) of the MAI Act and has lodged a notice of claim within the time frames permitted for the notice. An insurer must include information about the person's eligibility to make a common law claim, the time frames for the person to lodge a notice of claim and that the person may wish to seek legal advice as to whether to make a claim for damages.

8. GUIDELINES – INFORMATION AND SUPPORT – WPI OFFERS

8.1 These guidelines make provision for the information and support an insurer is obliged to give a person that receives a WPI offer about making a motor accident claim for the purposes of paragraph 52(2)(g) of the MAI Act.

8.2 An insurer must include with a written notice given to an injured person under subsection 157(2) or 164(2) of the MAI Act statements about the time frame for the person to lodge a notice of claim, and that the person may wish to seek legal advice as to whether to make a claim for damages.