

Australian Capital Territory

Motor Accident Injuries (Persons Living Outside of Australia) Guidelines 2019

Disallowable instrument DI2019–276

made under the

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

1 Name of instrument

This instrument is the *Motor Accident Injuries (Persons Living Outside of Australia) Guidelines 2019*.

2 Commencement

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

3 Guidelines

I make the Persons Living Outside of Australia Guidelines attached to this instrument.

Sue Vroombout
Acting MAI Commissioner
MAI Commission
16 December 2019

Persons Living Outside of Australia Guidelines

1. INTRODUCTION

The Persons Living Outside of Australia 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 making periodic payments for defined benefits for Australians living overseas and for making lump sum payments in relation to foreign nationals that have permanently left Australia.

2. STATUTORY FRAMEWORK

Part 2.9 of the MAI Act requires treatment and care benefits and income replacement benefits for an Australian living overseas to be made in the form of regular instalments. It also enables a foreign national that leaves Australia permanently to receive a lump sum payment of defined benefits in certain circumstances.

The legislative framework for defined benefits for person's living outside of Australia includes:

- the MAI Act; and
- these Guidelines.

3. GUIDELINES – PERIODIC PAYMENT OF DEFINED BENEFITS AUSTRALIANS' LIVING OVERSEAS (SECTION 183)

These guidelines make provision for the period an Australian living overseas must live outside Australia, and also for the amount and frequency of periodic payments payable to an Australian living overseas.

3.1 Period Australian must live overseas

3.1.1 There is no minimum eligibility period for a person who is an Australian citizen or permanent resident to be living outside Australia before they can receive periodic payments.

3.1.2 However, an insurer should be satisfied that an Australian seeking periodic payment, in advance, intends to live outside Australia permanently or for an extended time. An insurer should obtain information about a person's intended place of residence, and any work, study and visa arrangements to determine whether a person intends to reside overseas permanently or for an extended time. An extended time should be a minimum period of 26 weeks.

3.2 Amount and frequency of payments payable to an Australian living overseas

3.2.1 An insurer must make monthly instalment payments for an Australian living overseas, in advance, if expected reasonable and necessary treatment and care expenses for the month approved in the person's recovery plan are in excess of \$1,000 AUD for a given month.

3.2.2 Expected monthly treatment and care expenses are to be based on the likely costs of the treatment and care in the location or region where the person resides. A person is to provide accounts and receipts showing that the approved treatment and care expenses have actually been incurred to an insurer within 10 business days of the end of a given month. If expenses incurred are less than the instalment amount, then any overpayment must be repaid to the insurer. An overpayment may be recovered through adjusting a future instalment or other amount payable by the insurer to the person. If evidence is not provided, or actual treatment and care expenses fall below \$1,000 per month, the insurer should cease making monthly instalments in advance to the Australian living overseas.

3.2.3 Outside of the above circumstances, treatment and care expenses incurred overseas and approved in a person's recovery plan, or otherwise determined to be reasonable and necessary by an insurer, should only be reimbursed in arrears on a monthly basis, with a payment only required to be made once the total amount to be reimbursed for the month or cumulative months exceeds \$1,000 AUD, or the person's entitlement to defined benefits has ended.

3.2.4 An insurer must be provided with a medical report from an overseas treating practitioner on at least a quarterly basis in respect of the treatment and care of an Australian living overseas. This will enable an insurer to update the person's recovery plan and approve any future treatment and care including for the purposes of instalment payments.

3.2.5 Income replacement payments should continue to be payable to an Australian living overseas on a fortnightly in arrears basis subject to the person providing the insurer with a current fitness for work certificate and work declaration. A fitness for work certificate may be provided by an overseas health practitioner, provided the certificate includes all information required in an Australian certificate.

3.2.6 An account and receipt, medical report or fitness for work certificate must include sufficient information so the delivery of the services and the health practitioner's registration and/or qualifications can be independently verified by an insurer. If a document is not in English, the insurer may accept an English translation of the document. The insurer may request that the translation be certified and/or a declaration be provided by the injured person that the translation is true and correct. The insurer is not required to reimburse the Australian living overseas for any translation costs they incur.

3.2.7 To ensure it is appropriate to continue to make income replacement payments and or approve treatment and care payments an insurer may request an Australian living overseas undergo an independent medical or other examination overseas. An injured person may decide to return to Australia for the examination and may request that the insurer pay a

contribution towards the airfare. The insurer is not required to do so, nor pay for the return airfare to the overseas location. If there is a refusal by the injured person to have an examination, the insurer may suspend the payments until such time as the person returns to Australia for the purpose of a medical examination (temporary return) or permanently returns. If a person permanently returns, they should be no longer managed as an Australian living overseas.

3.2.8 Benefits paid to an Australian living overseas must be paid into an Australian bank account (authorised deposit-taking institution). Benefits for treatment and care expenses incurred in foreign currency are to be converted into Australian dollars using the Reserve Bank of Australia (RBA) exchange rate last published on the RBA website for a business day (other than a bank holiday) immediately prior to the date the account and receipt for the expense was received by the insurer

4. GUIDELINES – LUMP SUM PAYMENT OF CERTAIN DEFINED BENEFITS- FOREIGN NATIONALS (SECTION 184)

These guidelines make provision for the eligibility of an injured person who is a foreign national to a lump sum payment for certain defined benefits.

4.1 Eligible foreign nationals

4.1.1 A foreign national will only be eligible to be paid a lump sum payment if the person intends to permanently depart Australia. A foreign national is a person that is not an Australian citizen or permanent resident. A foreign national must inform an insurer of their intention to depart Australia and make an application for a lump sum payment prior to their departure from Australia.

4.1.2 An application for a lump sum payment must be made in writing and include the following information:

- full name, residential address, email address and other contact details in Australia;
- individual claim identifier;
- residential address, email address and other contact details in the country they intend to reside;
- details of arrangements for ongoing treatment and care and income support in the country they intend to reside including about:
 - eligibility for, and availability of, any ongoing treatment and care through the country's health system, and
 - benefits available while the person is unable to work (eg. social security);
- a certified copy of the person's current Australian visa or other document permitting their stay in Australia;
- a certified copy of a valid current passport for the person;
- departure details including ticketing information;
- a declaration that the person intends to permanently depart Australia and acknowledging that making false and misleading statements is an offence;

- banking details or cheque direction for payment in Australian dollars; and
- have an acknowledgement that they will need to sign an agreement for a lump sum.

4.2 Amount to be included in calculating a lump sum

4.2.1 A foreign national that makes a lump sum application at least 28 calendar days prior to their intended departure date from Australia must be given the opportunity to undergo a medical assessment with a health practitioner selected by the insurer to assess their future reasonable and necessary treatment and care needs and their likely capacity to do any paid work during any remaining period that defined benefits are payable.

4.2.2 The insurer is responsible for arranging and meeting the costs of this assessment. The insurer must give the foreign national at least seven (7) days' notice of any assessment appointment and the assessment appointment must occur prior to their departure from Australia.

4.2.3 If a foreign national does not elect to undergo a medical assessment or only makes their lump sum application within 28 calendar days of their intended departure date, then an insurer may base the lump sum calculation on information the insurer has in their possession at the time the application is made. This could include:

- a medical report;
- a recovery plan;
- treatment and care pre-approved by an insurer; and
- a current fitness for work certificate.

4.2.4 An insurer may, at their discretion, arrange for a medical assessment of the foreign national to be conducted in the country they intend to reside in after their departure from Australia.

4.2.5 A lump sum amount should be calculated as the present value of future treatment and care and income replacement payments for a maximum period of defined benefits, which is up to 5 years from the date of the motor accident. For the purposes of the calculation:

- treatment and care payments should be at current price levels
- income replacement shall not include an allowance for any future wage increases.

4.2.6 A real discount rate is to be used in the calculation. The applicable discount rate is 5 per cent. The MAI Commission may declare a different discount rate by notifiable instrument. If a different discount rate is declared, this rate must be used in the calculation. The following timing assumptions should apply to the calculation:

- ongoing treatment and care expenses paid in equal monthly instalments based on the likely period these would have been payable, and/or

- one-off treatment and care expenses are paid in the year the expense is likely to be incurred, and/or
- income replacement payments paid fortnightly, with a maximum of 26 payments being made in a calendar year.

4.2.7 The formula for calculating the lump sum can be expressed as follows:

$$PV = P_{(mon)} \frac{1 - \left(1 + \frac{D}{12}\right)^{-n}}{\left(\frac{D}{12}\right)} + P_{(ftnt)} \frac{1 - \left(1 + \frac{D}{26}\right)^{-n}}{\left(\frac{D}{26}\right)} + \frac{OP}{(1 + D)^n}$$

Where:

- PV = Present Value
- n = Number of payment periods
- D = The prescribed discount rate expressed as a decimal number
- P(mon) = Ongoing treatment and care monthly payment
- P(ftnt) = Income replacement fortnightly payment
- OP = One-off treatment and care payment

4.2.8 An insurer should work out a person's future treatment and care expenses based on the reasonable cost of treatment and care in the location the foreign national intends to reside in, or if the treatment is not available in that location, in a nearby location or country. An insurer should only include reasonable and necessary treatment and care expenses in the calculation. An insurer should not include any amounts for treatment otherwise covered by the public health system in the new location, or for expenses of a non-medical nature including domestic services, travel expenses or home modifications.

4.2.9 Future income replacement payments are to be based on the income replacement benefit entitlements the person was being paid prior to their departure from Australia, using the formulas in section 96 and 97 of the MAI Act. The present value of the payments should also only cover any period that the person is likely to have no capacity to do any paid work in the country they intend to reside in and should be reduced by any unemployment or sickness benefits (this should be considered post-injury earning capacity for the purposes of the calculation) the person may otherwise be entitled to in their new location.

4.2.10 Any expenses or amounts in foreign currency are to be converted into Australian dollars using the Reserve Bank of Australia (RBA) exchange rate last published on the RBA website for a business day (other than a bank holiday) immediately prior to the date the lump sum application was received by the insurer.

4.2.11 If the lump sum amount calculated is less than \$10,000 Australian dollars then the person is not eligible for a lump sum payment.