

Australian Capital Territory

# Motor Accident Injuries (Insurer Communication) Guidelines 2020

Disallowable instrument DI2020–15

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 (Insurer Communication) Guidelines 2020*.

## **2 Commencement**

This instrument commences on the day after notification.

## **3 Guidelines**

I make the Insurer Communication Guidelines attached to this instrument.

Lisa Holmes  
MAI Commissioner  
MAI Commission

12 February 2020

# Insurer Communication Guidelines

## 1. INTRODUCTION

The insurer communication 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 to insurers on communicating with persons injured in the motor accident, applicants for defined benefits and claimants for motor accident claims.

Specifically, this guideline is designed to provide for the circumstances in which, and matters that, insurers may communicate directly with an applicant for defined benefits, a claimant under a motor accident claim and people otherwise injured in a motor accident.

## 2. STATUTORY FRAMEWORK

Section 432 of the MAI Act makes provision for insurers to contact and communicate directly with applicants and claimants and people otherwise injured in a motor accident (whether or not the person has legal representation).

The legislative framework for insurer communication includes:

- the MAI Act;
- regulations made under the MAI Act; and
- MAI Guidelines.

## 3. GUIDELINES – COMMUNICATING WITH PEOPLE IN RELATION TO MOTOR ACCIDENT – s 432

### 3.1 Communicating directly with an applicant or claimant

**3.1.1** Communication is required to be undertaken in the circumstances specified in these guidelines. It is noted that under section 52 of the MAI Act a relevant insurer has obligations to provide information and support to applicants for defined benefits. The information and support obligations are addressed in other relevant guidelines, in particular the Defined Benefit Application, Treatment and Care, Income Replacement Benefit, Quality of Life Benefit and the Internal Review Guidelines.

**3.1.2** An insurer may contact and communicate directly with an applicant or claimant in any of the following circumstances:

- in response to any issue an applicant or prospective applicant, or claimant, has contacted an insurer directly about; or
- in any of the circumstances set out in section 52 of the MAI Act and corresponding guidelines; or
- for any request for information in relation to an application including the

arrangement of assessments or examinations and any questions or issues arising from these matters; or

- if an insurer must give a written notice, make an offer or provide reasons for a decision to an applicant under the MAI Act, the regulations or the MAI Guidelines.

Note: Application includes any request that can be made to an insurer under the MAI Act. A form need not exist for making that request.

**3.1.3** Where an applicant or prospective applicant, or claimant makes contact with an insurer about a matter through a legal representative (for example, submits the application for defined benefits under a lawyer's letter), the insurer is to respond at the same time to both the injured person and the legal representative. This is to ensure the injured person receives information from the insurer and is therefore not reliant on the timely conveyance of information from the legal representative.

### **3.2 Communicating with a legal representative**

**3.2.1** Where the applicant or claimant is legally represented in relation to a matter, and the insurer has been given an authority to act from the applicant/claimant, the insurer must also give a copy of any written notice, offer, or reason for a decision to the legal representative at the same time.

**3.2.2** Where the applicant/claimant's legal representative seeks to limit the contact of the insurer with the applicant or claimant, the insurer is to inform the legal representative that the insurer is authorised to communicate directly with the applicant or claimant.

**3.2.3** Where there are matters in negotiation, before the ACAT or a court, the insurer is not restricted in communicating with the applicant or claimant. An insurer can continue to manage an applicant's/claimant's benefits (particularly to support their recovery) while the ACAT or court is considering the matter, even if the matter is concerned with particular benefits, etc.

**3.2.4** These guidelines do not authorise a law practice or a solicitor for a law practice representing an MAI insurer to communicate with another solicitor's client.

Note: *Law practice* is defined in the *Legal Profession Act 2006*. Rule 33 of the *Legal Profession (Solicitors) Conduct Rules* provides for communication with another solicitor's client.