

Motor Accident Injuries (Lawyer Information Collection) Regulation 2021

Subordinate law SL2021–23

made under the

Motor Accident Injuries Act 2019 (s 492)

EXPLANATORY STATEMENT

Overview

The *Motor Accident Injuries Act 2019* (MAI Act) commenced on 1 February 2020 and applies to motor vehicle accidents in the ACT from that date. The MAI Act replaced the compulsory third-party (CTP) insurance scheme.

The MAI Scheme provides defined benefits to anyone injured in a motor accident and additional common law benefits to people more seriously injured and whose injury was caused by someone else's fault. The Act establishes the Motor Accident Injuries (MAI) Commission to monitor and administer the MAI Scheme.

The purpose of the Motor Accident Injuries (Lawyer Information Collection) Regulation 2021 is to authorise the collection of information by the MAI Commission from lawyers providing legal representation to injured parties.

The regulation will require lawyers to provide information to the MAI Commission on legal fees and related costs. The information is only required where there is an application for external review before the ACT Civil and Administrative Tribunal or a common law claim has been made against an insurer. The provision of this information will ensure the MAI Commission has visibility of the overall costs of the MAI Scheme.

Details

Clause 1 names the regulation as the Motor Accident Injuries (Lawyers Information Collection) Regulation 2021.

Clause 2 provides for the commencement of the regulation on the 45th day after its notification day. This gives the legal profession some time to prepare for reporting the information.

Clause 3 inserts a dictionary at the end of the regulation.

Clause 4 provides a note included in the regulation is explanatory and is not part of the regulation.

Clause 5 provides the operative provisions for the information to be given to the MAI Commission by lawyers representing injured persons. This regulation is made for the purposes of section 469 of the MAI Act.

Subclause 1 applies the requirement for a lawyer who represented a client in an application for external review of an ACAT reviewable decision (an ACAT application) or a motor accident claim (a common law claim) to give information to the MAI Commission.

Subclause 2 defines the relevant period that the lawyer is to give information. For an ACAT application, this begins when the application is made and ends when the ACAT makes an order deciding or dismissing the application. For a motor accident claim, the period begins when the notice of claim was given to the insurer and ends on either the payment of an amount in damages, either court awarded or through settlement, or when the court decides the matter through a judgement.

The lawyer has a defined period of time in which to collect and report the information to be given to the MAI Commission. The reportable information is outlined in subclause (6).

Subclause 3 requires the information to be given to the MAI Commission about the ACAT application or motor accident claim, with *subclause 4* specifying when the information is to be given. This is 28 days after the period defined in subclause (2), or if the lawyer stopped representing, 28 days after that time. If another lawyer takes over the representation of a client for an ACAT application or motor accident claim, that lawyer has an obligation to report, as required by subclause (1).

The lodgement of the reportable information will be via electronic lodgement using a portal, the link being available at www.act.gov.au/maic.

Subclause 5 provides that failure to comply with the section by a lawyer can be professional misconduct or unsatisfactory professional conduct under the *Legal Profession Act 2006*. It is therefore the duty of a lawyer to provide the information required by this regulation. If there is a failure to provide information, the MAI Commission can make a referral to the legal profession's regulatory authority to inquire into the conduct.

Subclause 6 sets out the meaning of an ACAT application, law practice and reportable information.

ACAT application means an application for external review of an ACAT reviewable decision.

A *law practice* has the meaning in the *Legal Profession Act 2006*. This definition is included to clarify it is the obligation of the lawyer to report the information notwithstanding the law practice may undertake billing for or on behalf of the lawyer.

The information that is to be provided by a lawyer who represented a client is outlined in the definition of *reportable information*. This provides for the costs of legal services to be reported, and includes a costs and disbursements estimate, actual amounts billed by the lawyer or a law practice representing the client and payable by the client, and any deductions from the amount ordered to be paid or awarded to the client. This information may include fees payable to a lawyer who previously represented the client in relation to the application or claim.

Information about the amount of costs or disbursements associated with making the application or claim, and fees for any medical or health reports included or likely to be included in an application for costs, must also be reported. The information will be matched after entry into the portal with information held by the MAI Commission, including costs incurred by insurers.

Dictionary

The Dictionary contains references to definitions of terms defined in other legislation and are relevant to the regulation.