Motor Accident Injuries Scheme

Information Booklet – Death Benefits and Common Law Claims

ACT Government

Motor Accident Injuries Commission

Acknowledgement of Country

The MAI Commission acknowledges the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region.

We respect the Aboriginal and Torres Strait Islander people, particularly our Aboriginal and Torres Strait Islander staff, and their continuing culture and contribution they make to the Canberra region and the life of our city.

Produced by the MAI Commission. Enquiries about this publication should be directed to the MAI Commission

GPO Box 158, Canberra City 2601
act.gov.au
Telephone: Access Canberra – 13 22 81 or
MAI Commission 6207 8876.

The ACT is a diverse community, enriched by people from a wide range of cultural, linguistic and social backgrounds, including people living with disability. This diversity is recognised as a strength.

The ACT Government is committed to making its information, services, events and venues as accessible as possible.

If you are deaf, or have a hearing or speech impairment, and need the telephone typewriter (TTY) service, please phone 13 36 77 and ask for 13 22 81.

For speak and listen users, please phone 1300 555 727.

For more information on these services, contact us through the National Relay Service: www.accesshub.gov.au.

If English is not your first language and you require a translating and interpreting service, please telephone Access Canberra on 13 22 81.

Feedback on the booklet

The MAI Commission welcomes feedback on the booklet. You can email us at maic@act.gov.au or call 6207 8876.

Contents

Introduction

The Motor Accident Injuries Scheme

The Motor Accident Injuries (MAI) Scheme supports people injured in a motor accident. Support is available no matter who is at fault. The MAI Scheme is part of registering your car in the ACT. This means all registered vehicles have MAI insurance. The MAI Commission is the government body that oversees the MAI Scheme.

The MAI Scheme is privately underwritten. Insurance companies use the funds from premiums to pay for supports. The ACT Government has approved four insurers– AAMI, APIA, GIO and NRMA. They are known as an “MAI insurer”.

You need to make an application to an MAI insurer for support. This is usually the insurer of the vehicle that is at fault. Insurers give support when they accept an application, as required by law. A default insurer, the Nominal Defendant, provides support if there is no MAI insurance on the vehicle.

About the Information Booklet

This booklet gives you and your family information about the MAI Scheme. It explains the support available if someone dies from a motor accident.

It also explains when and how you can take legal action for a motor accident (called a ‘common law claim’ or ‘motor accident claim’).

Funeral or Dependant Benefits

Common Law Claim

There is a separate booklet about how to apply and other supports available. These other supports are Treatment and Care Benefits, Income Replacement Benefits and Quality of Life Benefits. MAI Scheme supports are called Defined Benefits.

Treatment and Care Benefits

Income Replacement Benefits

Quality of Life Benefits

You can find more resources, application forms, and contact information for insurers on the MAI Commission’s website: www.treasury.act.gov.au/maic

Defined Benefits Information Service (DBIS)

The Defined Benefits Information Service (DBIS) is a free service. They give information, some legal advice and support to people about the MAI Scheme. This includes access to a social worker.

The DBIS cannot represent you in the ACT Civil and Administrative Tribunal (ACAT) or the Court. There are limitations on advice they can give about workers compensation, employment law, income protection, and common law claims. However, they can refer you to the right services and supports.

Contact the Free DBIS

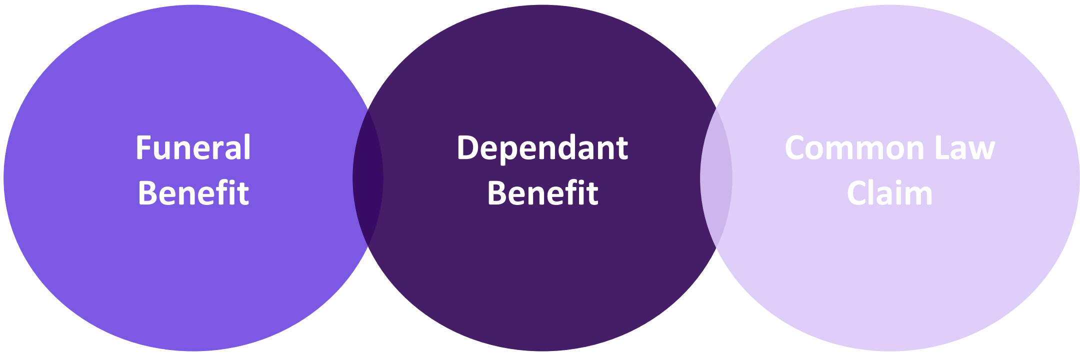
Available 9am – 5pm weekdays

Phone number:
1300 209 642

Email address:
DBIS@carefcs.org

Support when a person has died

Please be assured you can get support with funeral costs and for dependants after a death.



Funeral Benefit

The funeral benefit can help with some funeral costs.

How to apply

The person who pays for the funeral applies for the funeral benefit.

You will need to fill in the Funeral Benefits Application form. You can find this form on our website. You can apply even if you do not have all the details of the accident.

You can send your application to any ACT MAI insurer. You do not need to know who caused the accident. If you know who the person had MAI insurance with, send the application to that insurer.

You apply within 13 weeks of the death. The insurer can accept a late application up to 12 months if you have a satisfactory reason for the delay.

Talk to the funeral director if you need help with the form. You can also ask the free Defined Benefits Information Service for help.

What is covered?

Funeral costs can include:

- transport,
- certificates and permits,
- funeral director fees,
- the cremation or burial, and
- the funeral or memorial ceremony.

The cost of a wake or memorial service are not included.

The amount available is adjusted every year. You can find the current amount on our website.

Dependant Benefit

Dependant benefits can help people who relied financially on the person who died.

Who can apply?

Only people with certain relationships to the person who died can apply.

You can get support if you are a domestic partner of the person. A former domestic partner can get support if they rely on the person financially.

You can get support if you were a dependent child of the person who died. This includes:

- their child (even if you did not live together),
- a grandchild or stepchild that was living with them.

You must also be at least one of the following:

- under 18 years old,
- a full-time student and under 25 years old, or
- a person with a disability who relies financially on the person who died.

How to apply

You need to fill in the Dependant Benefits Application form. You can find this form on our website. Apply to the MAI insurer for the vehicle that caused the accident.

More information about finding the correct insurer is in a separate booklet (*Motor Accident Injuries Scheme Information Booklet – Defined Benefits*).

You need to apply within 13 weeks of the death. The insurer can accept a late application up to 12 months if you have a satisfactory reason for the delay.

Payment amount

The payment will be a lump sum (paid all at once). The amount available is adjusted every year. You can find the current amount on our website.

Payment amounts increase with each child up to four children. If the person had more than four children, the total amount will be shared between them.

In some cases a Death Benefit payment will not be made. For example, if the person got a Quality of Life payment before their death.

What happens after you apply

The insurer will check your relationship to the person who died. You may need to show how you were dependent.

The ACT Civil and Administrative Tribunal (ACAT) decides how the money is distributed. The insurer will apply to ACAT for this decision.

When ACAT has all the information, they will make an order for the payment.

See ACAT's website for more information on this process.

Police and coronial processes can delay your application. The insurer cannot change these timings.

Common Law Claim

The estate or dependants of a person who has died may be able to make a common law claim. More information is below (*Common Law Claims*).

If you want to read more:

How to apply for support

Defined Benefits Forms

Your Responsibilities

- ✓ Apply within 13 weeks of the death.
- ✓ Give the insurer reasons for late applications.
- ✓ Respond to the MAI insurer.

Need Help?

We acknowledge this may be a difficult time for families. The Defined Benefits Information Service can help you during this process.

Contact the Defined Benefit Information Service on 1300 209 642 or by email DBIS@carefcs.org.

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Common Law Claims

Making a common law claim is **not** the first step to get support for your injuries.

First, apply for Defined Benefits. You can get treatment and income support no matter who caused the motor accident.

More information is in a separate booklet (*Motor Accident Injuries Scheme Information Booklet – Defined Benefits*).

You will see some of these terms:

Common Law Claim

The way to take legal action when someone else is at fault for the motor accident. This is also called a Motor Accident Claim.

Common Law Damages

Money you may get after a common law claim is successful. Common law damages are paid as one payment (lump sum).

At Fault

Someone who was negligent and caused the motor accident.

Permanent Impairments

Injuries that have resulted in a loss of function that may continue long-term. Permanent impairment severity is shown as a percentage of Whole Person Impairment (WPI).

Who can make a Common Law Claim

If you were not at fault for the accident, you may be able to make a common law claim.

You can make a claim if one of these applies:

- you have a whole person impairment (WPI) of at least 10 per cent,
- you are a child still getting treatment and care benefits four years and six months after the accident, or
- you are an adult still getting income replacement benefits four years and six months after the accident and applied for a significant occupational impact (SOI) assessment.

If you got workers compensation, you can still make a common law claim to an MAI insurer. You must show that you have permanent impairment(s) and someone else was at fault.

More information about getting a WPI assessment is in a separate booklet (*Motor Accident Injuries Scheme Information Booklet – Defined Benefits*). More information about getting a SOI assessment is below.

How to make a Common Law Claim

You send a Notice of Claim form to the at fault MAI insurer. This is usually the insurer that paid your defined benefits. The insurer must acknowledge they are the proper respondent for the claim.

While the at fault driver may sometimes be called the ‘defendant’, the insurer will manage the claim.

More information about finding the correct insurer is in a separate booklet (*Motor Accident Injuries Scheme Information Booklet – Defined Benefits*).

Investigating fault

Someone else must be at fault for you to make a common law claim. You may be able to make a claim if you were partly at fault. You may get reduced payment.

The insurer will investigate who was at fault. This investigation may happen while you are getting defined benefits.

Types of Common Law Damages

There are different types of payments. You may give information for more than one.

Common law damages are different to defined benefit support. More information about defined benefits is in a separate booklet (*Motor Accident Injuries Scheme Information Booklet – Defined Benefits*). Support is taking into account when calculating damages.

Treatment and Care

You can claim treatment and care costs you will need in the future. The insurer will take off payments already made under defined benefits.

You cannot claim payment for care given by family members.

Income Replacement

You can claim income replacement for as long as you are likely to need it.

You cannot claim for the first 12 months after the motor accident.

After 12 months you can claim your full loss plus superannuation. This is capped at three times the average weekly earnings as published by the Australian Bureau of Statistics.

Quality of Life

You can make a claim for loss of quality of life. You cannot make a quality of life claim if you got a quality of life defined benefit payment.

The amount you can claim is based on your WPI and any impacts the court thinks appropriate. The maximum amount available is adjusted every year. You can find the current amount on our website.

This does not apply to children. The court will decide the amount payable for a child.

Death

If a person has died, their estate or dependants can make a claim. The insurer will take off payments if already made under death and quality of life defined benefits.

Significant Occupational Impact (SOI) Assessment

An SOI assessment looks at how your injury affects your ability to work. The insurer will let you know if you can get an SOI assessment. You cannot get your own assessment.

You need to have a WPI assessment first. More information about getting a WPI assessment is in a separate booklet (*Motor Accident Injuries Scheme Information Booklet – Defined Benefits*).

The insurer needs your consent for the SOI assessment. You can give consent between 4 years from the accident to the end of defined benefits at 5 years.

The insurer will collect information to help the assessor. This may include evaluations of your work capacity, medical records, certificates and reports.

You will have at least one interview with the assessor. They will review information and make observations. It might involve a physical exam.

The assessor will make an SOI report. This report might confirm your injury has a significant impact on your ability to work. If it does, you can make a common law claim. You have three months to lodge a Notice of Claim.

What if I disagree with the SOI report?

You can apply to ACAT for a review. You must apply within 14 days after you get notice from the insurer.

ACAT can agree there is no impact or confirm that there is an impact. If ACAT confirms that there is an impact, you can make a claim. You have three months to lodge a Notice of Claim.

Visit ACAT's website for the form, fees and more information.

Where can I get help?

Making a common law claim can be complex. A court action may be needed if there is disagreement about the claim. This includes about who is at fault or the amounts claimed.

The insurer must give you information about making a claim.

The Defined Benefits Information Service can help but cannot represent you or prepare your application.

You can choose to manage your own claim, without a lawyer to help you. If you need a lawyer, contact the Law Society for firms that may assist. You will need to agree on the lawyer’s fees.

If your claim is successful, you may want financial advice on how to manage your money. Get advice from an accountant or the Australian Taxation Office on tax implications.

If you want to read more:

Motor Accident Injuries (Significant Occupational Impact Assessment) Guidelines 2023

Common Law Claims Form

Your Responsibilities

- ✓ Get defined benefits before making a common law claim.
- ✓ Have a WPI assessment if an adult.
- ✓ If eligible, send the Notice of Claim form to the insurer.
- ✓ Engage with the MAI insurer and ACAT.

Need Help?

Contact the free Defined Benefit Information Service if you need help on 1300 209 642 or by email DBIS@carefcs.org