

Interaction between the *Motor Accident Injuries Act 2019* and the *Workers Compensation Act 1951*

Accidents involving workers in a motor vehicle

Background

The Motor Accident Injuries (MAI) Scheme commenced on 1 February 2020. The Scheme provides defined benefits on a no fault basis to persons injured as a result of ACT motor accidents. These benefits are similar to and may overlap with statutory benefits available under the *Workers Compensation Act 1951* (WC Act). Common law damages remain available under the MAI Scheme to those with more serious injuries and who were not at fault in an accident.

The *Motor Accident Injuries Act 2019* (MAI Act) makes provision for an injured worker who is involved in a motor accident (e.g. a journey claim) to choose their preferred insurance scheme, recognising there are differences in the design of the two schemes. It also limits claims for benefits being made to both schemes at the same time. This is important, as it provides the injured worker and the two insurers with certainty and continuity as to who is responsible for the management of benefits and the worker's recovery.

Under section 50 of the MAI Act, the entitlement to defined benefits under the MAI Scheme is limited where a claim is accepted by the workers compensation insurer. The section also provides that if there is a withdrawal of the application for workers compensation within 13 weeks after the date of the motor accident or the application is denied, the entitlement to MAI defined benefits is revived. The injured worker then engages with the MAI insurer regarding their benefits. Data from the MAI Commission indicates that there are 21 journey claims notified to MAI insurers which are currently or may have been managed by workers compensation insurers. This data is a result of a notification requirement in the MAI Act.

Uncertainty has arisen regarding what acceptance and denial can mean in relation to section 50, as under the WC Act an insurer can settle a claim, including by making a payment without an admission of liability or without prejudice. As there is ambiguity, it may be appropriate to clarify in these circumstances when an injured worker from a motor accident can come into the MAI Scheme from workers compensation. To help with context, we describe these as a successful or unsuccessful workers compensation claim below.

There is no change proposed to the injured worker's ability to select a given scheme for either their statutory/defined benefits or a common law claim. A worker will also retain the ability to switch from the workers compensation scheme to the MAI Scheme in the first 13 weeks after the date of the accident.

What is potentially changing?

A successful workers compensation claim

It is proposed to amend section 50 of the MAI Act to make it clear the outcome when a workers compensation insurer accepts or settles a workers compensation claim (e.g., make a lump sum payment) in any way they and the injured worker agrees. If there is such an agreement regarding the injured worker's workers compensation claim, then it is proposed that their entitlement to further defined benefits from the MAI Scheme is ended. This is because the benefits have been paid by the workers compensation insurer,

however characterised in the agreement, with the injured worker's consent/agreement. This becomes a successful workers compensation claim.

The change is to expressly include a reference into the MAI Act about agreements by including the words "otherwise settled in accordance with the *Workers Compensation Act 1951*, including on a without prejudice basis." A note is proposed that provides a reference to section 133 of the WC Act, which provides a workers compensation insurer may make a payment without accepting liability for the injury to which the payment relates. The attachment provides for how this proposed change will likely look in the MAI Act. Comments on this issue and the proposed drafting solution is requested.

An unsuccessful workers compensation claim

An injured worker is able to revive their application with the MAI insurer at any time if a claim for workers compensation is denied. This was because it can take some time for the workers compensation insurer to investigate the facts of a journey claim and make a decision in relation to the claim, thus there is no time limit on the injured worker shifting to the MAI Scheme in this circumstance.

However, as drafted, section 50(3) uses the word "denied", which could be interpreted as a denial of liability for the claim by a workers compensation insurer irrespective that a lump sum payment is made on a no prejudice basis. Another example that someone might possibly interpret as "denied" is when a workers compensation insurer denies further statutory benefits but the denial is due to the injured person having recovered from their injury. As a result, the word "denied" could create ambiguity, following any change to what is considered a successful workers compensation claim (as earlier discussed).

No draft changes have been prepared yet on the section wording for an unsuccessful workers compensation claim. We would like to ensure there is no ambiguity for an injured person about the circumstances that can apply in relation to reviving their application with the MAI insurer. Comments on how to address the ambiguity with respect to denial is requested.

Feedback

We would welcome your feedback on both aspects of section 50.

Why is it necessary to address the ambiguity?

If there is ambiguity about the status of an injured worker's workers compensation claim, there could be a delay in the MAI insurer taking over the management of defined benefits if the worker came to the MAI Scheme. This delay could have an impact on the person's recovery, and certainly would delay any income replacement payments being made.

The intent of section 50 is to provide a clean break between the two schemes. It is important for an injured worker to know who has the management of their income payments and treatment and care, and understand their options. These should not be impacted by ambiguity.

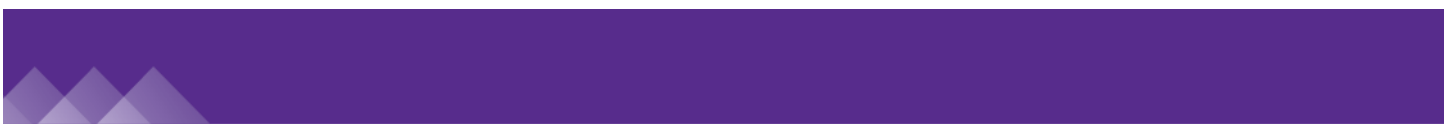
The change is limited to the MAI Scheme and will have no impact on workers compensation entitlements or on how the workers compensation insurer manages the claim.

How to give feedback?

You can provide your feedback on the changes to:

Lisa Holmes, Executive Branch Manager, Insurance Branch: Lisa.Holmes@act.gov.au, or Erica Lejins, A/g Senior Director, MAI Regulatory Policy and Supervision, Insurance Branch: Erica.Lejins@act.gov.au.

If you'd like to discuss your feedback, you can contact Ms Lejins on (02) 6205 5496. Your early feedback would be appreciated. Consultation period will close on Thursday 23 March 2023, 5 pm.



Motor Accident Injuries Act 2019**50 Entitlement limited—workers compensation applicant**

- (1) This section applies if a person—
- (a) is injured in a motor accident; and
 - (b) is entitled to defined benefits; and
 - (c) applies for compensation under a workers compensation scheme in relation to the injury.
- (2) If the person’s application for workers compensation is accepted, the person’s entitlement to the following defined benefits ends on the day the application is accepted by the insurer for the application:
- (a) income replacement benefits;
 - (b) treatment and care benefits;
 - (c) quality of life benefits.
- (3) However, the person’s entitlement to defined benefits is revived if the person’s application for workers compensation is—
- (a) withdrawn within 13 weeks after the date of the motor accident; or
 - (b) denied.

Note If an injured person who has made a successful application for compensation under a workers compensation scheme in relation to a motor accident does not withdraw that application within 13 weeks after the date of the motor accident, the person will continue to be entitled to compensation in accordance with the scheme.

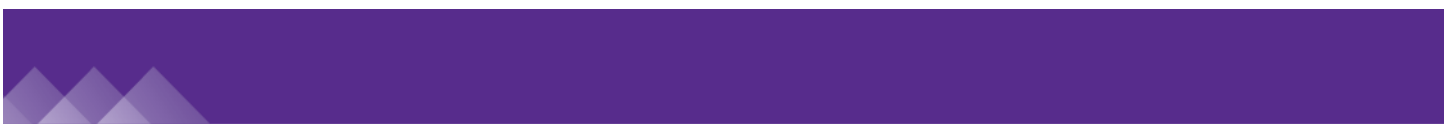
- (4) Defined benefits are not payable in relation to any benefits paid and not recovered under the workers compensation scheme before the application was withdrawn or denied.

Section 50 is shown with proposed changes in relation to a successful workers compensation claim (shown in purple):

50 Entitlement limited—workers compensation applicant

- (1) This section applies if a person—
- (a) is injured in a motor accident; and
 - (b) is entitled to defined benefits; and
 - (c) applies for compensation under a workers compensation scheme in relation to the injury.
- (2) A person’s entitlement to relevant defined benefits ends on the day the person’s application for workers compensation is –
- (a) accepted; or
 - (b) otherwise settled in accordance with the *Workers Compensation Act 1951*, including on a without prejudice basis.

Note A licensed insurer under the *Workers Compensation Act 1951* may make a payment without accepting liability for the injury to which the payment relates (see that Act, s 133).



(3) However, the person's entitlement to relevant defined benefits is revived if the person's application for workers compensation is—

- (a) withdrawn within 13 weeks after the date of the motor accident; or
- (b) denied.

Note 1 If an injured person who has made a successful application for compensation under a workers compensation scheme in relation to a motor accident does not withdraw that application within 13 weeks after the date of the motor accident, the person will continue to be entitled to compensation in accordance with the scheme.

Note 2 See also the withdrawal requirements under s 73(4).

(4) Relevant defined benefits are not payable in relation to any benefits paid and not recovered under the workers compensation scheme before the application was withdrawn or denied.

(5) In this section:

Relevant defined benefits means the following:

- (a) income replacement benefits;
- (b) treatment and care benefits;
- (c) quality of life benefits.

(Subsection (5) is a drafting change, to include a definition of relevant defined benefits in place of the list of defined benefits used in current section 50(2))

Section 239 allows that a person who has a workers compensation claim accepted can still make a common law claim against an MAI insurer. Section 239(4) is shown below with the change required to provide consistency if section 50 is amended.

successful application for workers compensation benefits, by an injured person in relation to an injury, means an application by the person for workers compensation benefits that—

- (a) has been made at least 26 weeks before the date—
 - (i) the person gives a notice of claim to the insurer for the motor accident claim; or
 - (ii) a WPI assessment is carried out on the person; and
- (b) has been—
 - (i) accepted by the insurer for the application; or
 - (ii) otherwise settled with the insurer for the application in accordance with the *Workers Compensation Act 1951*, including on a without prejudice basis; and

Note A licensed insurer under the *Workers Compensation Act 1951* may make a payment without accepting liability for the injury to which the payment relates (see that Act, s 133).

- (c) has not been withdrawn by the injured person.

