

Australian Capital Territory

Road Transport (Third-Party Insurance) Early Payment Guidelines 2016 (No 1)

Disallowable instrument DI2016–279

made under the

Road Transport (Third-Party Insurance) Act 2008, s 75A (Early Payment Guidelines)

1 Name of instrument

This instrument is the *Road Transport (Third-Party Insurance) Early Payment Guidelines 2016 (No 1)*.

2 Commencement

This instrument is to commence the day after its notification.

3 Revocation

I revoke instrument DI2013-88, being the Road Transport (Third-Party Insurance) Early Payment Guidelines 2013 (No 2).

4 Guidelines

I approve the following Guidelines for the early payment of medical expenses under Chapter 3 of the *Road Transport (Third-Party Insurance) Act 2008*.

Karen Doran
CTP Regulator
10 November 2016



ACT CTP Regulator

EARLY PAYMENT GUIDELINES

Section 75A of the *Road Transport (Third-Party Insurance) Act 2008*

1. INTRODUCTION

The purpose of the Early Payment Guidelines (the Guidelines) is to provide guidance regarding the application of the early payment for medical expenses entitlement under Chapter 3 of the *Road Transport (Third-Party Insurance) Act 2008* (the Act).

Specifically, this material is designed to guide insurers in how to administer the early payment scheme. An application is made on a joint Motor Accident Notification Form (MANF) and Motor Accident Medical Report (MAMR) form.

2. STATUTORY REGIME

Chapter 3 of the Act makes provision for the early payment of medical expenses to a person injured in a motor accident.

The legislative framework of the early payment scheme includes:

- i. the Act;
- ii. Road Transport (Third-Party Insurance) Regulation 2008 (the Regulation); and
- iii. these Guidelines.

Defined terms used in the Act or Regulation have the same meaning in this document.

3. OBJECTIVES OF THE PAYMENT

Chapter 3 of the Act provides for an injured person to claim up to \$5,000 for medical expenses reasonably incurred within 6 months of the motor accident.

A CTP Insurer is obliged to meet the medical expenses of the injured person in accordance with section 73 of the Act and as a condition of their licence (see section 185). The Nominal Defendant is the insurer for the payment of expenses where a person is not a CTP insured person (section 68)¹.

¹ For the purposes of the Guidelines a reference to CTP insurer includes the Nominal Defendant.

This entitlement to early payment for medical expenses aligns with the objects set out in section 5A of the Act. By minimising monetary barriers, the early payment scheme seeks to provide earlier access to treatment and a greater focus on health outcomes and rehabilitation.

Evidence suggests that the earlier injuries are treated, the more likely injured persons will be able to fully recover from their injuries. Accordingly, an injured person can commence rehabilitation and other related medical services soon after the injury occurs, regardless of whether they are pursuing a compensation claim.

4. EARLY PAYMENT

4.1 Submission to the relevant insurer

Section 72 of the Act provides that a Motor Accident Notification Form is to be provided to the injured person's insurer. This form is known as the joint MANF/MAMR. It should be provided to and accepted for processing by the person's CTP insurer². Where a person is not a CTP insured person, or has a unregistered vehicle permit, the joint MANF/MAMR is to be provided to the Nominal Defendant.

Following application to the injured person's insurer, the insurer may identify the at-fault vehicle and their insurer. The insurer may refer the MANF/MAMR to the at-fault insurer after notification to the injured person. The injured person's CTP insurer and the at-fault insurer may also agree to the injured person's CTP insurer managing the claim and sharing the early payment costs with the at-fault insurer. The shared costs are to be determined under the sharing guidelines.

In cases where an at-fault vehicle and their insurer may be identified at the time a joint MANF/MAMR application is prepared, the form may be submitted to the at-fault insurer.

The MANF/MAMR may be given to the at-fault insurer if the at-fault vehicle has been identified in the formal accident report issued by the police, or the injured person is confident in identifying the at-fault vehicle in their self-report to the police. If, however, a difference exists between the stated at-fault vehicle in the accident report issued by the police and the self-report, the at-fault vehicle outlined in the accident report issued by the police prevails. The provision of registration details in the MANF/MAMR by an injured person of the vehicle they think was at fault is not 'identification' of the CTP insurer for the purposes of determining the at-fault insurer for a MANF/MAMR.

Guidance: An injured person is entitled to submit to their own insurer the MANF/MAMR.

In this case, once the at-fault vehicle and their insurer are identified, the relevant CTP insurer may arrange to take over the management of the early payment and make a reimbursement to the insurer that accepted the application. Otherwise, the injured person's insurer² should manage the early payment process.

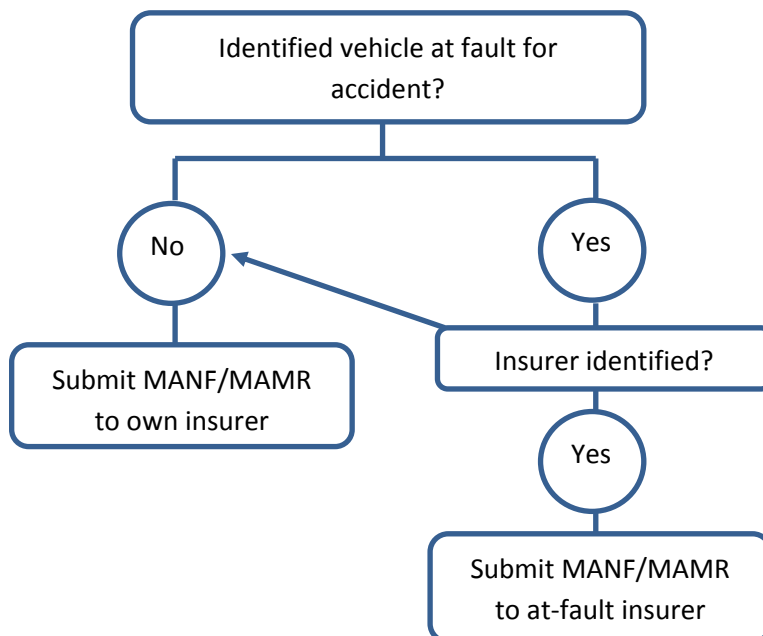
However, if the at-fault vehicle and insurer have been identified by a police accident report, or a self-report, before the application is made by the injured person, the MANF/MAMR may be submitted directly to the at-fault insurer (see flowchart).

² In the case of vehicle passengers, to the CTP insurer of the vehicle they were travelling in, or if the at-fault vehicle is known, the at-fault's vehicle's insurer. This would also include cyclists and pedestrians.

In this case, submitting the application directly to the at-fault insurer will:

- enhance continuity for injured people as they would deal with one insurer; and
- reduce claims handling expenses for insurers, such as by way of avoiding claims recoveries by one insurer from another.

Early payment claim flowchart:



4.2 Application

An injured person may apply to access early payment for their medical expenses by providing the joint MANF/MAMR and a police report, no later than 30 working days³ after the motor accident. The applicant must declare the accident was not wholly or mainly caused by them.

If an injured person is under a legal disability then the 30 working day period for submitting an application begins once the legal disability ends. However, the injured person or someone acting on their behalf is not prevented from submitting an application or complying with the early payment provisions under the Act while the injured person is under the legal disability. The definition of a person under a legal disability is found in the *Limitation Act 1985 (ACT)*.

If an injured person has applied for a police report but it has not been received within 30 working days after the motor accident, they may include in the MANF/MAMR a statement stating the date when the accident was reported and:

- i. the name and rank of the police officer to whom the accident was reported; or
- ii. the submission number for the report.

Once the injured person receives the police report they must provide it to the insurer within 14 days of receiving it.

³ For the purposes of the Guidelines the term 'working day' is defined in Part 1 of the Dictionary, *Legislation Act 2001* where a 'working day' is a day that is not a Saturday, a Sunday or a public holiday in the ACT.

4.3 Payment

Payment for medical expenses are for expenses incurred within 6 months after the day the motor accident happened and reasonably incurred because of the personal injury caused by the motor accident.

The insurer must pay the injured person the amount(s) claimed (up to \$5,000) upon verification of the account or receipt provided by the injured person in respect of the medical expenses they have incurred or are to incur. The account must include the information prescribed by section 19 of the Regulation. The receipt provided by the injured person should be a tax invoice. The Regulation requires that an account and the receipt include the following details:

- i) when the medical expenses were incurred;
- ii) when the account was issued;
- iii) the amount of the medical expenses;
- iv) the name and address of the medical provider for the account; and
- v) the goods or services obtained for the medical expense.

A medical provider, for an account or receipt for medical expenses, means the person to whom payment for the medical expenses was, or is to be, made.

The insurer may accept an electronic copy or copy of an account/receipt. The insurer may ask for the original if not satisfied of the accuracy of the account or the receipt or ask the medical provider to confirm the information in the account or receipt is accurate.

Guidance: Within 10 working days of receiving an account or receipt, the insurer must:

- Verify and assess the account or receipt; and
- Decide to pay the amount claimed and make the payment; or
- Decide not to pay the amount claimed and communicate that decision with brief reasons to the person applying for the early payment.

If the injured person has provided an account or receipt for their medical expenses that fulfils the requirements and is able to show a causal link between the accident and the expenses incurred or to be incurred then an insurer must not restrict or attempt to restrict the kind of medical treatment an injured person can claim.

4.4 Amount payable

The maximum amount an insurer is required to pay under the early payment provisions is \$5,000 or, if determined by the CTP Regulator, a higher amount. A determination is a disallowable instrument.

If two or more injured persons were injured in the same motor accident, the maximum amount of medical expenses payable under the early payment provisions applies to each such person and is not reduced by the early payment of the medical expenses of the other injured people.

Guidance: An insurer may make payments for a person’s medical expenses. An insurer is able to pay in addition to the maximum amount of early payment for medical expenses prescribed by the Act or determination.

5. EXPENSES PAYABLE

Section 73 of the Act defines what medical expenses insurers are required to pay, being expenses:

- i. Incurred within 6 months after the day the motor accident happened; and
- ii. Reasonably incurred because of the personal injury caused by the motor accident.

In order to demonstrate an expense was ‘reasonably incurred’ the person applying for early payment must show that the expenditure on medical treatment relates directly to injuries caused by the accident.

Examples of appropriate medical expenses would normally include the cost of an initial consultation with a medical provider for the purpose of completing the joint MAMF/MAMR. Appropriate medical expenses would also include reasonable hospital, medical, rehabilitation and pharmaceutical expenses as well as reasonable attendant care and respite care. The early payment is intended to cover an injured person’s medical expenses and does not cover legal expenses.

Guidance: An insurer must not restrict or attempt to restrict the kind of medical treatment an injured person receives, however the insurer may consider whether it is reasonably incurred. If the expense is not considered reasonably incurred, please communicate that decision with brief reasons to the injured person.

6. LIABILITY

Section 75 of the Act confirms that any payment made by an insurer in relation to Part 3.2 of the Act is not an admission of liability in relation to the motor accident and does not in any way prejudice or affect a claim or proceeding arising out of the motor accident.

Consistent with the intention of the early payment scheme, the issue of liability is secondary to the early payment being made expeditiously.

Guidance: An insurer may make an early payment for medical expenses in relation to a motor accident whether or not the at-fault insurer has accepted liability in relation to a motor accident claim arising from the accident and whether or not a motor accident claim has been made against an insured person in relation to the motor accident.

6.1 Fault

In considering the criteria that the accident ‘was not caused wholly or mainly by the fault of the person’ under section 72(1)(c) of the Act an insurer should consider the overarching objectives of the early payment scheme when making determinations on applications for early payment. Specifically, that the early payment is designed to provide earlier access to treatment and facilitate a faster return to health for injured people.

Guidance: As a guide, any person who is not charged with a *serious traffic offence* in association with the accident would be entitled to the early payment.

A *serious traffic offence* is an offence under the ACT road transport legislation that is punishable by imprisonment for six months or more. For the purposes of the early payment scheme the conduct amounting to the serious traffic offence must have contributed materially to the person's injury. For relevant serious traffic offences, see Schedule 1.

7. DISPUTES

Disputes may arise regarding whether an injured person is entitled to early payment for medical expenses.

An insurer must inform the injured person who makes an application for early payment that is not accepted that they may request the CTP Regulator to review the decision made by the insurer. If a person has a dispute relating to their payments, the insurer should also advise the injured person that they may request a review by the CTP Regulator.

Guidance: The insurer and the injured person should use all reasonable endeavours to resolve a dispute regarding an early payment. If an injured person is not satisfied with attempts to resolve the dispute they may request the CTP Regulator to review decisions made by the insurer regarding their early payment application, including claimed expenses.

8. COST OFFSET

An insurer may offset its costs in paying the \$5,000 early payment or, if determined by the CTP Regulator, a higher amount to a claimant against any subsequent award of damages to that claimant.

The effect of cost offsetting is that an assessment of damages will take into account any money already paid to the claimant by the insurer as an early payment; that is, a reduction in the final damages amount that may be equal to the amount of early payment.

9. REPORTING REQUIREMENTS

The CTP Regulator is empowered to monitor the management of claims by licensed insurers and compliance with their obligations under the Act.

The provision of information relating to the early payment scheme to the CTP Regulator will assist with the development and support of programs, research, resources and guidelines that will assist effective injury management.

Guidance: Insurers must provide the CTP Regulator with information relating to early payment applications.

The insurer must provide the following details in relation to each early payment application:

- i. Whether the application was approved;
- ii. If payable, how much did the insurer pay to the injured person;
- iii. If the insurer rejects the application, the reason the application was rejected; and
- iv. The time taken to process the application.

The insurer must provide this information to the CTP Regulator through the Personal Injury Register (PIR) as part of reporting requirements under the Act. Early payment information is to be reported even if the injured person does not proceed to claim for compensation beyond the early payment.

Serious Traffic Offences for the purposes of the Early Payment Guidelines

Section	Offence description	Penalty (Penalty units (pu)/ imprisonment)
Road Transport (Alcohol and Drugs) Act 1977		
19 (1) Special driver, first offender	special driver drive motor vehicle on road/related area with level 3 or more alcohol in blood—first offender	10 pu/6 months prison/both
19 (1) Special driver, repeat offender	special driver drive motor vehicle on road/related area with level 3 or more alcohol in blood—repeat offender	10 pu/6 months prison/both
19 (1) Special driver, first offender	special driver drive motor vehicle on road/related area with level 4 or more alcohol in blood—first offender	15 pu/9 months prison/both
19 (1) Special driver, repeat offender	special driver drive motor vehicle on road/related area with level 4 or more alcohol in blood—repeat offender	20 pu/12 months prison/both
19 (1) first offender	drive motor vehicle on road/related area with level 3 or more alcohol in blood—first offender	10 pu/6 months prison/both
19 (1) repeat offender	drive motor vehicle on road/related area with level 3 or more alcohol in blood— repeat offender	10 pu/6 months prison/both
19 (1) special driver, first offender	drive motor vehicle on road/related area with level 4 or more alcohol in blood—first offender	15 pu/9 months prison/both
19 (1) special driver, repeat offender	drive motor vehicle on road/related area with level 4 or more alcohol in blood—repeat offender	20 pu/12 months prison/both
20 (1)	drive motor vehicle on road/related area with prescribed drug in oral fluid or blood—repeat offender	25pu/3 months prison/both
22 (c) first offender—driver	refuse to provide breath sample—first offender	30 pu/6 months prison/both
22 (c) first offender—driver trainer	refuse to provide breath sample—first offender	30 pu/6 months prison/both
22 (c) repeat offender—driver	refuse to provide breath sample—repeat offender	30 pu/12 months prison/both
22 (c) repeat offender—driver trainer	refuse to provide breath sample—repeat offender	30 pu/12 months prison/both
22 (d) first offender—driver	fail/refuse to provide breath sample in accordance with reasonable directions of police officer—first offender	30 pu/6 months prison/both
22 (d) first offender—driver trainer	fail/refuse to provide breath sample in accordance with reasonable directions of police officer—first offender	30 pu/6 months prison/both
22 (d) repeat offender—driver	fail/refuse to provide breath sample in accordance with reasonable directions of police officer—repeat offender	30 pu/12 months prison/both
22 (d) repeat offender—driver trainer	fail/refuse to provide breath sample in accordance with reasonable directions of police officer—repeat offender	30 pu/12 months prison/both
22A (2) (a) first offender—driver	refuse to provide sample of oral fluid for analysis—first offender	30 pu/6 months prison/both
22A (2) (a) first offender—driver trainer	refuse to provide sample of oral fluid for analysis—first offender	30 pu/6 months prison/both
22A (2) (a) repeat offender — driver	refuse to provide sample of oral fluid for analysis—repeat offender	30 pu/12 months prison/both
22A (2) (a) repeat offender—driver trainer	refuse to provide sample of oral fluid for analysis—repeat offender	30 pu/12 months prison/both

22A (2) (b) first offender—driver	fail to provide sample of oral fluid in accordance with reasonable directions of police officer—first offender	30 pu/6 months prison/both
22A (2) (b) first offender —driver trainer	fail to provide sample of oral fluid in accordance with reasonable directions of police officer—first offender	30 pu/6 months prison/both
22A (2) (b) repeat offender— driver	fail to provide sample of oral fluid in accordance with reasonable directions of police officer—repeat offender	30 pu/12 months prison/both
22A (2) (b) repeat offender— driver trainer	fail to provide sample of oral fluid in accordance with reasonable directions of police officer—repeat offender	30 pu/12 months prison/both
23 (1) first offender—driver	fail/refuse to permit blood sample to be taken—first offender	30 pu/6 months prison/both
23 (1) first offender—driver trainer	fail/refuse to permit blood sample to be taken—first offender	30 pu/6 months prison/both
23 (1) repeat offender— driver	fail/refuse to permit blood sample to be taken—repeat offender	30 pu/12 months prison/both
23 (1) repeat offender— driver trainer	fail/refuse to permit blood sample to be taken—repeat offender	30 pu/12 months prison/both
23 (2) first offender—driver	behave in manner so impossible/impractical for blood sample to be taken— first offender	30 pu/6 months prison/both
23 (2) first offender—driver trainer	behave in manner so impossible/impractical for blood sample to be taken— first offender	30 pu/6 months prison/both
23 (2) repeat offender— driver	behave in manner so impossible/impractical for blood sample to be taken— repeat offender	30 pu/12 months prison/both
23 (2) repeat offender— driver trainer	behave in manner so impossible/impractical for blood sample to be taken— repeat offender	30 pu/12 months prison/both
23 (3) (a) first offender—driver	fail/refuse to submit to medical examination—first offender	30 pu/6 months prison/both
23 (3) (a) first offender—driver trainer	fail/refuse to submit to medical examination—first offender	30 pu/6 months prison/both
23 (3) (a) repeat offender— driver	fail/refuse to submit to medical examination—repeat offender	30 pu/12 months prison/both
23 (3) (a) repeat offender— driver trainer	fail/refuse to submit to medical examination—repeat offender	30 pu/12 months prison/both
23 (3) (b) first offender—driver	fail/refuse to give/permit taking of body sample—first offender	30 pu/6 months prison/both
23 (3) (b) first offender —driver trainer	fail/refuse to give/permit taking of body sample—first offender	30 pu/6 months prison/both
23 (3) (b) repeat offender— driver	fail/refuse to give/permit taking of body sample —repeat offender	30 pu/12 months prison/both
23 (3) (b) repeat offender— driver trainer	fail/refuse to give/permit taking of body sample —repeat offender	30 pu/12 months prison/both
24 (1) first offender	drive vehicle on road/related area under influence of intoxicating liquor/drug incapable of proper control of vehicle— first offender	30 pu/6 months prison/both
24 (1) repeat offender	drive vehicle on road/related area under influence of intoxicating liquor/drug incapable of proper control of vehicle— repeat offender	30 pu/12 months prison/both
24A (1)	drive/ride/be in charge of vehicle/animal on road under influence of alcohol	50 pu/6 months prison/both

Road Transport (Driver Licensing) Act 1999		
31 (2) repeat offender	unlicensed driver/rider—repeat offender	50 pu/6 months prison/both
32 (1) (a) first offender	drive while disqualified—first offender	50 pu/6 months prison/both
32 (1) (a) repeat offender	drive while disqualified—repeat offender	100 pu/12 months prison/both
32 (2) (a) first offender	drive while licence suspended—first offender	50 pu/6 months prison/both
32 (2) (a) repeat offender	drive while licence suspended—repeat offender	100 pu/12 months prison/both
32 (3) (a) first offender	drive while licence cancelled/after licence refused—first offender	50 pu/6 months prison/both
32 (3) (a) repeat offender	drive while licence cancelled/after licence refused—repeat offender	100 pu/12 months prison/both
33 (1)	contravene conditions of restricted licence	50 pu/6 months prison/both
33A (1)	contravene interlock condition	50 pu/6 months prison/both
Road Transport (General) Act 1999		
231	hinder/obstruct police officer/authorised person/other person	50 pu/6 months prison/both
Road Transport (Safety and Traffic Management) Act 1999		
5C first offender	Fail to stop motor vehicle for police—first offender	100 pu/12 months prison/both
5C repeat offender	Fail to stop motor vehicle for police—repeat offender	300 pu/3 years prison/both
6 (1)	negligent driving occasioning death	200 pu/24 months prison/both
6 (1)	negligent driving occasioning grievous bodily harm	100 pu/12 months prison/both
7 (1) first offender, for aggravated offence (fail to stop for police)	aggravated offence (fail to stop for police)—drive furiously/recklessly/at speed dangerous/in way dangerous—first offender	300pu/3 years prison/both
7 (1) repeat offender, for aggravated offence (fail to stop for police)	aggravated offence (fail to stop for police)—drive furiously/recklessly/at speed dangerous/in way dangerous—repeat offender	500pu/5 years prison/both
7 (1) for other aggravated offence	aggravated offence—drive furiously/recklessly/at speed dangerous/in way dangerous	200pu/24 months prison/both
7 (1)	drive furiously/recklessly/at speed dangerous/in way dangerous	100 pu/12 months prison/both
8 (1)	drive with intent to menace	100 pu/12 months prison/both
8 (2)	drive knowing other may be menaced	100 pu/12 months prison/both
12	knowingly drive/stand unsafely loaded vehicle causing death/injury/damage	50 pu/6 months prison/both
13 (1)	responsible person for unsafely loaded vehicle causing death/injury/damage	50 pu/6 months prison/both
13 (2)	director/manager of corporation responsible person for unsafely loaded vehicle causing death/injury/damage	50 pu/6 months prison/both
16	not stop/give assistance after accident causing death/injury	200 pu/2 years prison/both