

CONFIDENTIAL

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This document has been created to assist MAIB staff in the management of claims. It is a guideline only and has no effect on the intent of the Act and Regulations.

1 Setting Common Law

As part of completing a claim data check, or during the life of a claim, Claims Officers assess the potential for common law. Once a decision has been made as to whether common law potential may exist, action is to be taken in the Motor Accident Claim System (MACS) to change the common law status.

This assists the Motor Accidents Insurance Board (**MAIB**) with:

- (a) the identification of claims where there may be a liability to pay damages; and
- (b) what the future potential financial liabilities in relation to claims might be.

The MAIB check that all new claims for the current month have been assessed with regard to the common law potential.

2 Assessing and Surveillance

There may be instances where the MAIB is not provided with enough information to enable a determination on claim eligibility to be made or the MAIB has doubts in relation to the accident circumstances, client's stated disabilities or it is a potential fraudulent claim. In these instances the MAIB can appoint an external provider to undertake factual investigations or surveillance.

An Assessing referral may be warranted in the below circumstances:

- Pedestrian, cyclist, passenger with serious injuries;
- Multiple vehicle accident where there is the potential for common law;
- Client has had previous claims;
- Accident circumstances differ between parties or other inconsistencies;
- Doubts relating to the claims made;
- Alcohol and drugs involved;
- Trade plates maybe involved;
- Drivers/owners cannot be established;
- Non-indemnifiable party at fault (potential recovery matter); or
- Inevitable accident.

A surveillance referral may be warranted in the below circumstances:

- To confirm the client's stated disabilities/inactivity;
- To confirm the client's stated inability to work;
- To confirm the housekeeping claims are valid and reasonable and the duties are being undertaken as claimed; or
- An anonymous tip off is received as to activities not in keeping with the claims disabilities and benefits.

3 Solicitor Appointments

In some cases the MAIB will appoint a solicitor to provide us with advice prior to a common law claim being received. The most common reasons to seek early advice are:

- Liability to pay scheduled benefits;
- Liability in respect to a potential common law claim;
- Potential recovery rights;
- Advice on a specific matter such as funding requests;
- Section 27A certification;
- Complex Disability Allowance claims;
- Potential fraudulent claims; or
- Clients who have previously had damages claims and or a similar injury.

In the majority of cases the MAIB will appoint a solicitor to act on our behalf following correspondence from the solicitor acting on behalf of the plaintiff or when the client has made a reference to the Motor Accidents Compensation Tribunal (**MACT**).

Using the allocation process in MACS will allocate a member of the MAIB's legal panel.

3.1 Common Law Process

1. Writ – commences the common law claim.
2. Appearance – entered by the defendant and delivered to the plaintiff to in effect acknowledge receipt of the writ and prevent judgment being entered.
3. Statement of Claim – sets out the facts upon which the plaintiff relies in making their claim.
4. Defence – a document prepared by the defendant responding to the statement of claim. Its purpose is to narrow down the issues and try and save time in the claim as a whole. The defendant either denies or admits allegations made by the plaintiff in the statement of claim.
5. Discovery – is a process whereby the plaintiff and the defendant and any other parties that may be involved in the action, obtain from each other a list of all documents relevant to the matter. The purpose is to try and determine the documentary evidence available and again to clarify the issues. The list has to be verified by an affidavit sworn by the defendant. Generally, the MAIB's insured will not have to make a list of documents.
6. Interrogatories – a list of questions delivered by one party to another party about the issues in the claim. The purpose is to enable the parties to obtain facts from each other to either support or establish proof of their case, or to find out what case has to be met, or to challenge the case brought by the other party. As with the list of documents, interrogatories must be sworn by the party being asked by the questions.
7. Particulars of claim – at differing stages in the running of a claim the plaintiff must provide the defendant with full details of the claim for damages. For example the plaintiff must detail the claim for past and future economic loss and medical expenses. These are called Special damages. The Plaintiff will also set out his loss of enjoyment of life, pain and suffering (this is called General damages).
8. Interlocutory applications – throughout the course of an action any party may file an interlocutory application which generally seeks orders or directions from the Court for one

or more of the other parties to an action to do something such as providing answers to interrogatories or delivering a list of documents.

Interlocutory judgments can sometimes be obtained if, for example, the defendant does not file an appearance or defence in time. Such judgments can be overturned but only on application to the Court. Often where there is no argument as to liability an interlocutory judgment for damages to be assessed may be entered. If that happens the only issue to be determined is the monetary value of the plaintiff's claim.

9. Compulsory conference – before the matter proceeds to a hearing, the parties, or normally their solicitors, must attend a conference which is held in an attempt to reach agreement on as many issues as possible and explore settlement possibilities and decide on the appropriate date, place and length of trial. The conference will also consider the adequacy of all other documents already delivered in the claim.
10. Certificate of Readiness – is a document both parties to an action must sign to say they are ready for the action to proceed to a hearing.
11. Pre-trial conference – prior to proceeding to the hearing, a conference takes place before a Judge. The Judge will try to ensure everything has been done to ensure the matter can, and is ready to proceed to a hearing. A lot of issues discussed by the parties at the compulsory conference will be discussed by the Judge at the Pre-trial conference.
12. Calderbank Offers – Is an offer of settlement expressed to be without prejudice save as to costs. It is a less formal offer than an offer of compromise. It is also used where, for technical reasons, an offer of compromise might not be appropriate.
13. Offer of Compromise. An offer of compromise must as a matter of law, be left open for acceptance for at least 14 days. It is a formalised offer with relative certain consequences as to costs depending on the outcome of proceedings. If the offer of compromise is not accepted within the time limited, the offer lapses (that is to say it is no longer capable of acceptance). In this respect it is different than a payment into Court which is capable of acceptance, subject to terms, after it expires. The opposite party is not required to respond to an offer of compromise. The appropriate step to take if one's instructions are not to accept the offer, is to ignore the offer. If the offer is not accepted within the time it lapses and the only effect thereafter is for the Court to make an appropriate costs order within the Rules.
14. Mediations – often a mediation is held before the Registrar of the Supreme Court for the purpose of attempting to negotiate a settlement of the claim before the matter proceeds to a hearing. The MAIB has specific requirements with respect to attendance at Registrar's conferences.
15. Hearing – the determination of the claim of the plaintiff before a Judge.
16. Judgment – if a claim settles prior to the matter proceeding to a hearing, the parties to an action can sign a consent judgment which formalises the agreement to settle the claim. A formal consent judgment is final and cannot be overturned.

The above actions are to be recorded in the events on the common law tab in MACS.

4 Time Limits to Bring Claims

1. For claims occurring after 1 July 2018, to commence a claim for damages for personal injury a Plaintiff must file a Writ within 3 years from the date of discoverability, this includes any action for damages under the Fatal Accidents Act 1934. A judge may extend this period to 6 years from the date of discoverability if he or she considers that, in the circumstances of the case, it is just and reasonable to do so.
2. For claims arising prior to 1 July 2018, the Plaintiff has to commence a claim for damages for personal injury a Plaintiff must file a Writ within 3 years from the date of discoverability or 12 years from the date the motor vehicle accident whichever is the earlier, this includes any action for damages under the *Fatal Accidents Act 1934*. There is an absolute limit of 12 years but it can be extended by a Judge to the expiry of 3 years from the date of discoverability having regard to a number of factors.
3. The MAIB has 6 years from the date an expense was claimed to seek recovery of a scheduled benefit.
4. Once a Writ is filed it has to be served upon the Defendant within 6 months. That time can be extended by the Court.
5. A Notice of Appearance to the Writ must be filed within the time limit as noted on the Writ, which is generally 8 days but can be longer in certain circumstances, for example an Interstate Writ is 21 days.
6. A Statement of Claim will be provided either at the same time as a Writ or within 21 days of the filing of the Notice of Appearance by the Defendant.
7. A Defence is to be provided within 21 days after the delivery of the Statement of Claim or 21 days after the time limited for the filing of a Notice of Appearance i.e. 28 days after the service of the Writ, whichever is the latter.
8. There are various other time limits for some aspects of common law action such as counterclaims, third party claims and provisions of replies.
9. Once the Defence is filed, pleadings are closed, and interlocutory steps occur, including the following:
 - An Affidavit Verifying List of Documents (Discovery) is to be completed within 14 days after the request is properly made by the other party.
 - If Interrogatories are delivered, the person to whom they are delivered has 14 days to give notice that some or all of the Interrogatories will not be answered without leave being obtained from the Court, if no such notice is provided there is a 14 day time period from the delivery of the request to answer the interrogatories verified by affidavit.
 - An appeal to the Full Court from a decision of a single Judge is to be made within 21 days for a Final Judgment or 10 days if the decision from which the appeal is being made is not a Final Judgment.
 - A party can apply for orders to impose time limits for other introductory steps such as the delivery of Proofs of Expert Evidence, arranging appointments for medical assessments, delivery of Particulars of Loss, Damage and Expense, the provision of a Certificate of Readiness or for the Certificate to be signed amongst other interlocutory steps that can be taken.
 - Any party can apply for an extension of time for all of the interlocutory steps and agree with the other party to extend time for any step. For example, where the Defence is to be provided within 21 days of delivery of a Statement of Claim the

parties can agree that a longer period is required or that no Defence needs to be provided at any given time whilst investigations are undertaken. The Court won't take any steps to compel the provision of a Defence of Statement of Claim or an Appearance for example if the parties are content with the time limits they agree between themselves. This of course does not prevent an application for Default Judgment for example being made by the party if a time limit has not been complied with.

- In practice most time limits are flexible and certainly in practice the time limits for the interlocutory steps (not the Writ, Statement of Claim or Defence) are very flexible. Generally, failure to comply with the limits doesn't result in any particular penalties being imposed upon the offending party without considerable failure to comply or continued failure to comply with orders that have been obtained.

5 Common Law Delegation of Authority

Staff and management must adhere to the defined delegated authority limits.

5.1 Authority Groups

	Authorisation Group
Liability Determinations	Claims Officers
Admitting Liability for Workers Compensation Insurer Reimbursements	Claims Officers
Rejection of Offers outside delegation level	Team Leader
Allocation of Interstate Solicitors	Team Leader
Agreement on Experts	Team Leader
Appointment of Counsel	Team Leader
Mediations	Team Leader
Trials and Certificate of Readiness	Manager Claims
Recovery Action (instalment payments, legal proceedings)	Team Leader Serious Injuries
Defaulting of Recoveries	CEO

5.2 Settlement Limits

Offers to settle should only be made following receipt of quantum advice and/or a settlement recommendation from the solicitor or counsel acting for the MAIB.

Small claims, <\$ [REDACTED], can be managed “in house” by the Claims Officer with oversight from the Team Leader – Claims.

All offers are required to be noted in MACS.

\$ Limits	Authorisation Groups	Documentation
	Trainee Claims Officers with endorsement from Team Leader	Consultation and signed authorisation from Team Leader
	Claims Officers	N/A
	Claims Officers with endorsement of any two managers: <ul style="list-style-type: none"> • Team Leader – Claims; • Team Leader – Serious Injury • Manager – Claims; • Chief Operating Officer. 	Completion of Standard Letter D11 – Request for Settlement Authority
	Claims Officers with endorsement from the Claims Committee	Completion of Standard Letter D11 – Request for Settlement Authority
	Claims Officers with endorsement from the Board of Directors	Completion of Standard Letter D11 – Request for Settlement Authority

*There will be instances where a manager has been involved in the management of a claim and approval provided without the completion of Standard Letter D11.

5.3 Rejection of Plaintiff Offers

Where a plaintiff lodges an offer that is *within a Claims Officer's delegation of authority* () and the MAIB's solicitor recommends that the offer be rejected, the Claims Officer can reject the offer, subject to completion of form D21.

The form should detail the following:

- Age;
- Employment;
- Comparison of heads of damages – MAIB versus plaintiff; and
- Reason for rejection of the offer.

Where a plaintiff lodges an offer that is *above a Claims Officer's delegation of authority* (greater than) and the MAIB's solicitor recommends the offer be rejected, the Claims Officer is to refer the matter to the Team Leader – Claims or Team Leader – Serious Injury with the advice of the MAIB solicitor, the Claims Officer's opinion and a recommendation for approval to reject the offer. Best practice is to use a MACS note about the suggested action to be taken referring to relevant documents.

If rejecting the plaintiff offer, and the recommended counter offer is greater than , a settlement paper will be required.

5.4 Liability Admissions

A Claims Officer can admit liability subject to completion of a MAIB Liability Determination form (D20). Liability admissions will need to be added to the common law tab in MACS.

There are 4 main areas the MAIB would deal with when considering liability:

- Liability Admitted;
 - A concession the MAIB insured was responsible for the occurrence of the motor accident and the injuries sustained by the plaintiff.
- Admit liability with contributory negligence;
 - A concession that whilst the MAIB insured breached their duty of care, the plaintiff also contributed by their actions to the outcome.
- Admit negligence but not damage;
 - A concession the MAIB insured was responsible for the occurrence of injuries sustained resulting from the motor accident
- Deny liability.
 - The defendant was not responsible for the motor accident

5.5 Liability Admissions where the MAIB has a right of recovery

Where the MAIB will have a right of recovery, the MAIB needs to provide the debtor with an opportunity to take their own legal advice prior to an admission of liability.

Current practice is to provide the debtor with 14 days to lodge any objection to a determination made by the MAIB on a proposed admission of liability. If no response is given the MAIB is to proceed as determined.

6 Compensation Payments and Interested Parties Recovery

If a person is successful in seeking damages and compensation is payable, there are Commonwealth departments that have a legislated authority to recover funds from the compensation payable, in respect of the injuries for which the damages were sought.

The MAIB will in all common law claims, satisfy the requirement to notify parties and fulfil the responsibilities to make payments to interested parties.

Unless otherwise approved by management, the MAIB policy on compensation payments is that all interested party payments will be deducted from the lump sum e.g. settlement less statutory repayments.

6.1 Medicare

The Australian Government through the *Health and Others Services (Compensation) Act 1995* has taken steps to ensure that no person receives double benefits for injuries or illness.

By law, a compensation payer must notify Medicare Australia within 28 days of the date of the judgement or settlement if the value of the settlement is more than five thousand (\$5,000).

Medicare is not required to be notified of claims that resolve at less than or equal to five thousand (\$5,000)(including all costs), or where a claim has failed, or is discontinued.

In order to satisfy the requirements of the scheme, the MAIB will upon receipt of a claim for compensation at common law:

- (a) Provide the person seeking compensation with written advice notifying them of the potential for payments to be made to Medicare from the compensation sum; and
- (b) Send a request for a *Medicare History Statement* to Medicare to put them on notice of the claim. Medicare will use the request to generate a *Notice of Past Benefits* document.

Upon receipt of a *Notice of Past Benefits* from Medicare, the MAIB will record the repayment amount to be made to Medicare on the **interested parties tab** of the claim in MACS.

Upon resolution of a compensation claim, if resolved for greater than five thousand (\$5,000) the MAIB will make the required payment to Medicare and supply Medicare with a completed Notice of Judgement or Settlement form within 28 days of the date of judgement or settlement.

Should a current *Notice of Past Benefits* document not be on file at the time of settlement or judgment and the amount to be repaid is unknown, Medicare will require the MAIB to forward an Advanced Payment of 10% of the agreed compensation payment, including costs (if known).

Medicare is **not** required to be notified of claims that:

- resolve at less than or equal to five thousand (\$5,000) (including all costs); or
- where a claim has failed, or is discontinued; or
- if the claimant is either:
 - an overseas visitor without a Medicare card; or
 - an Australian citizen who does not have a Medicare number, even if they attended a hospital for services.

6.2 Centrelink

The *Social Security Act 1991* allows Centrelink to issue a recovery notice for monies to be repaid from any compensation payment being made to an injured person.

A preliminary notice issued by Centrelink must be added to the **interested parties tab** of the claim on MACS. Where the MAIB has a preliminary notice, repayment may be required to be made.

If in receipt of a recovery notice, upon resolution of a compensation claim, the MAIB must supply details of the settlement judgement to Centrelink on an *Advice of Lump Sum Compensation Payments* form. Centrelink will then issue a recovery notice detailing any amount to be repaid or a release.

Compensation payments **must not** be released by the MAIB until the Centrelink recovery sum is known or a notice clearing the MAIB to release the compensation funds is received.

If the MAIB is on notice and we release the funds, the MAIB will be in breach of the *Social Security Act 1991*.

Where the MAIB has not been placed on notice by Centrelink, there is no responsibility to notify Centrelink of that compensation payment. Responsibility in these instances will fall to the injured person and the MAIB can release the settlement funds without delay.

6.3 Department of Education, Employment and Workplace Relations (DEEWR)

In accordance with Section 23 of the *Disability Services Act 1986*, repayments may need to be made to the DEEWR for rehabilitation programs undertaken by the injured person. If the DEEWR is aware of the claim for compensation being made, Centrelink, may issue a notice to the MAIB to recover funds at time of settlement.

If on notice, the MAIB must, upon resolution of the claim, contact DEEWR to arrange repayment. If the MAIB is not on notice, there is no requirement to contact DEEWR.

6.4 Resources

Information and forms regarding Medicare, Centrelink and DEEWR can be found on the Australian Government, Department of Human Services website www.humanservices.gov.au.

7 Appointment of Experts

There are some claims where expert advice is required in relation to particular complex matters, for example:

- An accountant or forensic accountant maybe required to advise on financial or business records relating to a disability allowance claim or economic loss claims; or
- An accident reconstruction expert may be engaged to provide advice in respect to the exact accident circumstances and/or liability.

The solicitor acting for the MAIB will recommend the relevant expert.

7.1 To allocate an expert in MACS

1. The Claims Officer discusses the recommendation with the Team Leader and/or the Manager - Claims.
2. The Manager - Claims will authorise the engagement of the expert.
3. The Claims Officer corresponds with the MAIB solicitor to advise of the approval to engage the required expert.
4. The Claims Officer places a note on MACS noting the approval to engage the expert.

8 Appointment of Counsel

In some cases, the MAIB Solicitor will recommend Counsel is briefed on a matter to obtain their advice. This maybe, but is not limited to the below circumstances:

- Liability is complex;
- Quantum is significant;
- Section 27A certification;
- Complex MACT reference;
- Complex common law process, e.g. Section 16 defence; or
- The claim is proceeding to trial.

To allocate Counsel to a claim in MACS:

1. The Claims Officer discusses the recommendation with the Team Leader or the Manager – Claims.
2. The Team Leader or Manager - Claims decides which Counsel is to be engaged.
3. On the Provider Tab in MACS, enter the name of the Counsel that is to be engaged and the type is set to: MAIB Counsel.
4. Correspond with the MAIB Solicitor to advise which Counsel is authorised to be engaged.

9 Completing Documents for Settlement Authority

Settlement authority documents are prepared when a settlement amount is above a staff members' delegation of authority.

Settlement authority is to be completed as soon as possible (within one week) following receipt of legal advice.

It is an opportunity to summarise the claim and any complexities or significant issues experienced in managing the claim (limit to a paragraph or 2).

- Avoid using abbreviations and acronyms.
- Use the plaintiff and defendant when referring to the parties.
- Use full dates (e.g. 26 September 2017).
- Be specific about injuries.

The legal advisors for the MAIB quantum/liability advice will be attached to the recommendation. Claims Officers don't have to repeat word for word what is said in the legal advice, just summarise the important points.

Medical Evidence – reports are not included as attachments. It is important that both parties medical position is captured. Dot point statements are preferred over long passages of text.

If the Claims Officer completing the Settlement Authority has an opinion on quantum and doesn't agree with the recommendation put forward by the solicitor acting for the MAIB, the Claims Officer should discuss the claim with the Team Leader/Manager and document the recommendation and reasoning.

Once the Settlement Authority is completed the document it is to be reviewed by the Team Leader.

The Claims Officer is to have formed a view of the next step to be taken after the Claims Committee or Board meeting at this point and be ready to action any provided authority after the meeting.

9.1 Claims Presented to the Claims Committee and Board

Claims Committee and Board claims papers are due with the Team Leader by the end of the month. Papers are provided to Directors on the second Thursday of the month. Board and Claims Committee meetings are held on the third Thursday of the month.

Create the claims paper in MACS and update all required details. Save to Content Manager, all changes and updates by Team Leaders and Management will be done in the Content Manager version.

All changes made by those clearing the claims paper will be done in mark-up. The paper will only be referred back to the Claims Officer if there is a need for content to be checked or further information to be provided.

The Claims Officer is to review the final version in mark-up to see where changes were made. Team Leaders are to take Claims Officer's through the mark-up to explain why changes were made.

All attachments for a claim are to be saved into Board Working Papers folder as soon as available (to assist all preparing/reviewing the claims paper).

Once the paper is declared final a word version is copied across to the Board Papers folder in W drive.

9.2 After Claims Committee and Board Meetings

Once a decision has been made and the relevant meeting concluded, a note will be added to MACS (by the Executive Secretary) with the decision of the Claims Committee and/or Board of Directors.

The Content Manager paper will be updated with the decision from the relevant meeting. The paper will then be finalised.

The Claims Officer will be ready to action the planned next steps in relation to the authority and proceed with action.

Claims that are presented to the Claims Committee/Board then form part of a monthly Board paper (Report on Claim Progress) until they settle.

It is important to document updates/offers in MACS as they occur. This information is used to provide monthly updates in the Report on Claim Progress.

9.3 Claim returning to Claims Committee or Board

If a claim is returning to the Claims Committee or Board, a new settlement authority paper will need to be created in Content Manager detailing the new developments and circumstances of the claim that have occurred since the last settlement authority paper.

Previous settlement authority papers will need to be included as an attachment to the new settlement authority paper.

10 Mediations (Alternative Dispute Resolution)

Where a mediation is being considered, discussion will take place with a Team Leader.

Prior to agreeing to attend a Supreme Court Mediation the following must be adhered to:

- Supreme Court Writ issued;
- Particulars of claim received;
- Opinion from MAIB Solicitor/Counsel received;
- All medical reports to be used by the MAIB have been released to the Plaintiff's solicitors;
- Settlement offers have been made "in writing" and negotiations have not been successful;
- The matter is capable of settlement at least from the MAIB perspective; and
- The signature of a Certificate of Readiness is possible.

Claims Officers should prepare to attend the mediation by:

- Confirming the MAIB solicitor is able to attend the mediation;
- Recording the upcoming mediation on the common law tab in MACS;
- Booking the pool car (if required);
- Booking accommodation for the night prior (if required);
- Know the claim facts;
- Be clear about what outcomes are wanted;
- Know our approved/agreed settlement ranges;
- Seek authority to negotiate to upper limit if required;
- Consider the main arguments and possible solutions;
- Consider what the plaintiff arguments could be;
- Make notes and take them to the mediation;
- Check for Centrelink and Medicare recoveries;
- Take a copy of Scheduled Benefit listing and disability payments; and
- Take a Medicare Notice of Settlement form for completion at the conclusion of the mediation.

If settlement is likely to be achieved at a level that would exceed the Claims Officer's authorised limit, discussion must take place with the Manager – Claims and Rehabilitation, the Chief Operating Officer or the Chief Executive Officer.

During the mediation Claims Officers should:

- Be in the company of a MAIB legal advisor (e.g. solicitor)
- Ensure the plaintiff fully explains their view;
- Be polite but firm;
- Put the MAIB argument simply and clearly;
- Listen carefully for offers;
- Summarise offers made;
- Watch body language;
- Get commitments in writing;
- Take notes;

- Take “time out” to discuss when needed;
- Act professionally in interacting with all parties involved; and
- Not agree to settlement without proper authority.

After the mediation Claims Officers should:

- Keep records of what was agreed;
- Convert hand written notes into a MACS note;
- Advise outcome to the MAIB management group;
- Check that the settlement is acted upon; and
- Undertake follow up action as needed.

11 Trials and Certificate of Readiness

Approval must be obtained from the Manager – Claims prior to instructing solicitors to proceed to sign the Certificate of Readiness and have the matter listed for trial.

There are areas that need to be carefully considered before the MAIB agrees to the signing of a Certificate of Readiness (matter is ready for trial):

- Documentation – Does the MAIB have **all** the documents the MAIB wants to tender in Court? As part of this process privilege on release of documentation also needs to be considered.
- Has consideration been given to agreeing any parts of the claim to minimise unnecessary costs and Court time at trial?
- Experts – Does the MAIB have all the experts needed to support the MAIB case? Has all expert evidence conformed with the rules?

The MAIB needs to be satisfied the solicitor acting for the MAIB has given this step careful consideration - a brief should be put together by the solicitor acting for the MAIB, showing all areas of the claim have been considered in support of the signing of the Certificate of Readiness.

12 Section 16 Claims

Section 16 deals with claims where a person has been injured as a result of a motor accident, but is unaware of the identity of the driver of the other motor vehicle, or the other driver has died or cannot be located after reasonable enquiry.

In order to be able to bring a claim at common law, the injured party must bring a notice of intention to bring a claim within 3 months of the date of the motor accident.

This period can be extended upon appropriate application to the Court. The reasons for the delay must be explained and the MAIB must not have suffered prejudice by reason of the delay.

13 Heads of Damage

These are categories of loss that are claims by the plaintiff.

Usually seen in particulars of claim are:

- Pain and suffering (general damages);
- Medical costs (past and future);
- Loss of Earning Capacity (past and future);
- Superannuation loss; and
- Other special damages.

14 Discount Rates for Tasmanian Common Law Actions

The Law is:

3%

Pre 1986 motor accidents, it was the common law and the High court's decisions for example in *Todorovic v Waller* that provided for the discount rate to be 3%.

7%

For motor accidents from 18 December 1986 until 14 December 2005 it was 7% because of Section 4(1)(e) of the Common Law (Miscellaneous Actions) Act 1986.

5%

From 15 December 2005 it is 5% because of Section 28A of the Civil Liability Act 2002.

15 Motor Accidents Compensation Tribunal

15.1 Introduction

The role of the MACT is to resolve or determine disputes between the MAIB and any person seeking, or in receipt of a benefit payable under the *Motor Accidents (Liabilities & Compensation) Act 1973*.

The MACT is an independent judicial body. Members of the MACT are appointed by the Governor.

15.2 Jurisdiction

If the MAIB has determined:

- a person is not to be treated as a person within a class of persons to whom scheduled benefits may be paid,
- a person is not to be paid any scheduled benefit,
- the amount of any scheduled benefit to be paid to a person;

or the MAIB:

- has refused or failed to make a payment of a scheduled benefit (medical account, funeral benefit, death benefit, disability allowance, disability benefit, or counselling service),

then the person aggrieved may refer that matter to the MACT. This referral is to be made within 14 days of receiving notice of the MAIB's decision or such further period as the MACT may, upon application, determine.

The MAIB is also entitled to refer to the MACT any matter affecting;

- the right of a person to a scheduled benefit, or
- the amount of any scheduled benefit.

A referral to the MACT must be accompanied by all relevant documents held by the party making the referral.

The MAIB is always represented by a solicitor. The client can choose to be legally represented.

15.3 Procedure

Once a reference is received by the MACT the parties will be obliged to engage in one or more pre-reference conferences which may be held in person or by telephone. The purpose of these pre-reference conferences is to:

- clarify what the issue is before the MACT;
- ensure any necessary investigations or medical examinations are arranged;
- determine the necessary steps for each party to take in order to resolve the claim;

- discuss the claim generally and obtain concessions from the parties as to fact, law or procedure where possible;
- discuss any other matter that may be relevant to achieving a speedy resolution of the reference; and
- prepare for the conduct of a conciliation conference and, if necessary, a formal hearing.

When the parties have concluded the preparation of their case and all relevant medical evidence to be relied upon has been provided to the other party, the case will proceed to a conciliation conference.

The purpose of the conciliation conference is to provide an opportunity for open and "*without prejudice*" discussion based on all the available information in order to facilitate a resolution of the dispute.

If a case is not resolved at the conciliation conference it will be listed for hearing before the MACT. The procedure before the MACT follows the format of a civil case heard by a Court. Based upon the evidence given and the application of applicable law, the MACT will make a determination of the referral and give written reasons for that determination.

A person aggrieved by a determination of the MACT may appeal to the Supreme Court. On determining a reference, the MACT may order a party to the reference to pay costs to another party to the reference and may fix the reasonable amount of those costs.

16 Workers Compensation Insurer Reimbursements

Where a person is injured in a motor vehicle accident during the course of work and the workers compensation insurer attends to costs for that person's injuries, the MAIB may have a liability to reimburse the costs incurred by the workers compensation insurer.

There are important sections of legislation to consider when an approach is made by the injured workers compensation insurer to recover costs paid under the Workers Rehabilitation and Compensation Act:

- Section 14 of the Motor Accidents (Liabilities and Compensation) Act 1973 sets out the liability of the MAIB;
- Section 25 of the Workers Rehabilitation and Compensation Act sets out the liability of employers to compensation;
- Section 134 of the Workers Rehabilitation and Compensation Act sets out the right of an employer to contribution or indemnity;
- Section 132 of the Workers Rehabilitation and Compensation Act defines "compensation" as payable under Section 75;
- Section 75 of the Workers Rehabilitation and Compensation Act defines "compensation"; and
- Section 74 of the Workers Rehabilitation and Compensation Act defines providers.

Lump sum impairment payments made by the insurer are recoverable.

The following costs are usually not recoverable by the workers compensation insurer:

- Investigations, including Police costs, surveillance and factual investigations;
- Legal fees;
- Medical and expert reports;
- Medical appointment non-attendance fees;
- Rehabilitation reports not brought within the definition of rehabilitation services; and
- Barristers' fees.

Some crucial cases in relation to employment and rights of recovery are:

- National Insurance Co of New Zealand v Blake and another TASFC (28 March 1984) - A worker injured by a fellow worker during the course of employment;
- Motor Accidents Insurance Board v Cook [2013] TASFC 4 (26 February 2013);
- Rhodes v O'Neill [2017] TASFC 1 (20 January 2017); and
- Bernie Howe Pty Ltd v Motor Accidents Insurance Board [2017] TASSC 27.

17 Information Requests

Requests for information usually come from:

- The client or their family;
- The solicitor acting for the client; or
- Another insurer who is dealing with a claim for the client.

The requests are usually seeking:

- A copy of the file;
- A copy of medical reports; or
- A copy of claim application forms, including Notice of Accidents.

All requests for information relating to the above are to be referred to the Executive Officer for review.