



Government Gazette

of the State of

New South Wales

Number 55–Other
Friday, 12 February 2021

The New South Wales Government Gazette is the permanent public record of official NSW Government notices. It also contains local council, non-government and other notices.

Each notice in the Government Gazette has a unique reference number that appears in parentheses at the end of the notice and can be used as a reference for that notice (for example, (n2019-14)).

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To submit a notice for gazettal, see the Gazette page.

GEOGRAPHICAL NAMES ACT 1966

PURSUANT to the provisions of Section 10 of the *Geographical Names Act 1966*, the Geographical Names Board has this day assigned the name listed hereunder as a geographical name.

Natural Bridge Cascade for a waterfall located on Barkala Gully, approximately 150 metres upstream from its junction with Hungerfords Creek, in the locality of The Devils Wilderness, in the Blue Mountains National Park.

The position and extent for this feature is recorded and shown within the Geographical Names Register of New South Wales. This information can be accessed through the Board's website at www.gnb.nsw.gov.au

NARELLE UNDERWOOD
Chair

Geographical Names Board
346 Panorama Ave
BATHURST NSW 2795

FORESTRY ACT 1916

Notice - Revocation of Timber Reserve No. 770

I, the Honourable Margaret Beazley AC QC, Governor of the State of New South Wales, with the advice of the Executive Council and in pursuance of the powers vested in me under section 22 of the *Forestry Act 1916*, as continued under clause 8(1) of Schedule 3 of the *Forestry Act 2012*, do, on the recommendation of the Deputy Premier, Minister for Regional New South Wales, Industry and Trade, revoke in whole the reservation of Crown land in place as specified in Column 1 of the Schedule below, as notified in the Government Gazette on 12 February 1883, to the extent specified in Column 2:

SCHEDULE

Column 1	Column 2
Parish: Mungiladh County: Narran Land District: Brewarrina Local Government Area: Brewarrina Locality: Goodooga Reserve No: 770 Public Purpose: Preservation of Timber Notified: 12 February 1883 File Reference: 11/01476#01	The whole of reserve 770 being Lot 2572 DP 764599 with an area of approximately 778.6 ha This co-exists with Western Lands Lease 7555

SIGNED and SEALED at Sydney this 16th day of December 2020

The Hon. Margaret Beazley, AC QC
Governor

By Her Excellency's Command

The Hon. John Barilaro, MP
Deputy Premier, Minister for
Regional New South Wales, Industry and Trade
[F21/43]

NOTICE OF PORT OPERATOR DIRECTION

(NO UNAUTHORISED WORKS)

Port Botany & Enfield ILC

Ports and Maritime Administration Act 1995 (NSW)
NSW Ports – Direction 2 of 2021 (replacing Direction 1 of 2020)

Powers & functions of the port operator of a private port

This notice contains a port operator direction issued by NSW Ports in its capacity as the port operator of the private port of Port Botany (including land comprising Enfield Intermodal Logistics Centre) under Part 3A of the *Ports and Maritime Administration Act 1995 (NSW)* (**PAMA Act**), for the purposes of maintaining and improving safety and/or security given that works (defined below) pose a risk to safety and/or security at Port Botany (**Notice**).

This Notice was issued to the Harbour Master of Port Botany on 10 February 2021 as required under the PAMA Act.

Pursuant to section 38(2) of the PAMA Act, a port operator direction given by notice published on a port operator's website is of no effect until a copy of the notice has been published in the Gazette.

This Notice takes effect on the later of 25 February 2021 and the date on which it is published in the Gazette.

*****PORT OPERATOR DIRECTION*****

TAKE NOTICE: Persons are PROHIBITED from undertaking any Works on, to, over or under land within the port land lease boundary of Port Botany comprising a Prescribed Road or a Prescribed Area (as identified in the location maps in Annexure A to this Notice) without the prior written consent of NSW Ports.

Compliance & Enforcement

FAILING TO COMPLY WITH THIS NOTICE IS A CONTRAVENTION OF SECTION 39 OF THE PAMA ACT

NSW Ports may enforce compliance with this Notice by:

- removing from Port Botany any person who is contravening this Notice;
- removing from Port Botany, or moving within Port Botany, any vehicle (including a trailer or container) that is stopped or parked in contravention of this Notice, at the non-complying party's cost;
- removing from Port Botany, or moving within Port Botany, any goods stored or left unattended in contravention of this Notice at the non-complying party's cost; or
- carrying out work that a person has failed to carry out in contravention of this Notice or that is reasonably required to be carried out to remedy a contravention of this Notice (provided, other than in an emergency, no less than 7 days' notice is provided to the person who failed to carry out the work), at the non-complying party's cost.

A person who obstructs or otherwise interferes with an Authorised Officer of the port operator performing their functions (including the giving or enforcing of a direction under this Notice) faces a **maximum penalty of 50 penalty units**, being \$5,500.00 (at the date of issue).

For the purposes of this Notice:

Authorised Officer means an employee or agent of NSW Ports.

NSW Ports means Port Botany Operations Pty Limited, being the port operator under the PAMA Act for the private port of Port Botany.

Port Botany means the land within the port land lease boundary at Port Botany and Enfield ILC as identified in the location maps in Annexure A.

Prescribed Area means the area marked as a prescribed area as identified in the location maps in Annexure A.

Prescribed Road means a roadway identified as a prescribed road, including the shoulder and any adjoining nature strip, in the location maps in Annexure A.

Works means any activity howsoever described including building, construction, repair, maintenance, engineering, structural, surveying, inspection, environmental, rectification or remediation works (including the taking of photos or video footage).

What you must do in order to obtain the written consent of NSW Ports to undertake Works:

In order for NSW Ports to properly consider providing its consent for you to undertake any proposed Works, you must do the following:

1. notify the appropriate contact person (see contact details below) **at least 7 days prior to the commencement of such Works**, and provide the following information (as a minimum):
 - details of the exact location(s) of the proposed Works, including a layout plan or marked-up map or diagram;
 - date(s) on which the Works are to be performed;
 - a scope of works for the Works;
 - details of persons engaged to perform Works;
 - contact details for a designated person who will supervise/manage the Works;
 - a communication plan to notify other relevant stakeholders (e.g. neighbouring tenants) as required; and
 - applicable safe work method statements, job safety analyses and/or safety management plans that address any risks or hazards relevant to the location and the nature of the proposed Works including, but not limited to, those which may be advised to you by NSW Ports;
2. complete the registration of all persons undertaking the Works in NSW Ports' *Rapid Global* system (or as otherwise directed by NSW Ports), which involves providing relevant contact details, submitting insurances and answering a HSE pre-qualification questionnaire (NSW Ports' contact person will supply details on how to complete this step); and

3. provide evidence, which in the opinion of the NSW Ports' contact person is satisfactory, that all persons nominated as undertaking the Works have successfully completed all applicable induction/s (via *Rapid Global* or as otherwise directed by NSW Ports) plus any other relevant third-party inductions.

Contact details:

For proposed Works at **Port Botany**, limited to the taking of photos or recording video footage:

Corporate Affairs Lead

Email: enquiries@nswports.com.au

Phone: 1300 922 524

For all other proposed Works at **Port Botany**:

Port Development Manager

Email: pbam@nswports.com.au

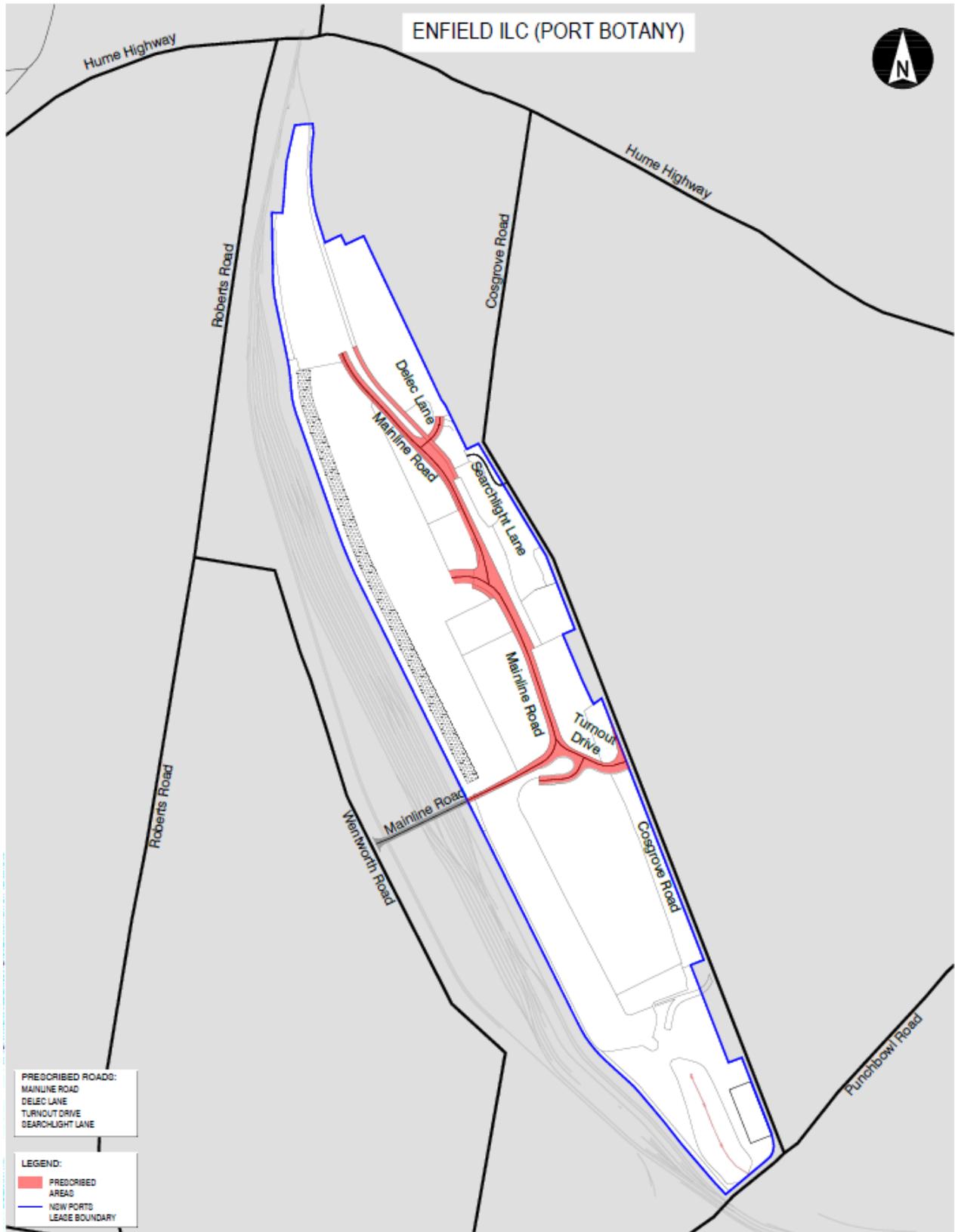
Phone: 1300 922 524

For general enquires:

Company Secretary

Email: companysecretary@nswports.com.au

Phone: 1300 922 524



Medical Assessment Guidelines

Version 5
Effective from
12 February 2021



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Publication Note

These Guidelines are published by the State Insurance Regulatory Authority (the Authority).

Part of the NSW Department of Customer Service, the Authority is constituted under the *State Insurance and Care Governance Act 2015* and is responsible for regulating workers compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation insurance in NSW.

These updated Guidelines support the establishment of the Personal Injury Commission on 1 March 2021. Savings and transitional provisions under the *Personal Injury Commission Act 2020* provide that pending proceedings and unexercised rights must be determined by applying the law as if the *Personal Injury Commission Act 2020* had not been enacted. Accordingly, these Guidelines are needed to determine those pending proceedings and unexercised rights. For all other matters from 1 March 2021, practice and procedure is governed by the Personal Injury Commission Rules and these Guidelines do not apply.

All references to 'Motor Accidents Authority' in earlier versions of this publication have been changed to the 'State Insurance Regulatory Authority' (the Authority).

Replacement and Transition

This new version of the Motor Accidents Medical Assessment Guidelines replaces in whole the previous versions of the Motor Accidents Medical Assessment Guidelines.

These Guidelines apply to all claims and applications made before or after the commencement of these Guidelines.

Legislative Framework

The *Motor Accidents Compensation Act 1999* (the Act) establishes a scheme of CTP insurance and common law damages for people injured in motor accidents in New South Wales occurring between 5 October 1999 and 30 November 2017 inclusive. The objects of the Act, as described in section 5, are:

- (a) to encourage early and appropriate treatment and rehabilitation to achieve optimum recovery from injuries sustained in motor accidents, and to provide appropriately for the future needs of those with ongoing disabilities,*
- (b) to provide compensation for compensable injuries sustained in motor accidents, and to encourage the early resolution of compensation claims,*
- (c) to promote competition in the setting of premiums for third-party policies, and to provide the Authority with a prudential role to ensure against market failure,*
- (d) to keep premiums affordable, recognising that third-party bodily insurance is compulsory for all owners of motor vehicles registered in New South Wales,*
- (e) to keep premiums affordable, in particular, by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities,*
- (f) to ensure that insurers charge premiums that fully fund their anticipated liability,*

(g) to deter fraud in connection with compulsory third-party insurance.

The *Motor Accidents Compensation Regulation 2020* (the Regulation) contains provisions that support the implementation and operation of the Act.

Guideline Making Powers

These Guidelines are made under section 44(1) of the *Motor Accidents Compensation Act 1999* with respect to:

- (a) the appropriate treatment of injured persons,*
- (b) the appropriate procedures with respect to the provision of rehabilitation services or attendant care services for injured persons (including the circumstances in which rehabilitation services or attendant care services are required to be provided),*
- (c) the assessment of the degree of permanent impairment of an injured person as a result of an injury caused by a motor accident,*
- (d) the procedures for the referral of disputes for assessment or review of assessments, and the procedure for assessment and review of assessments, under Part 3.4.*

Interpretation of the Guidelines

These Guidelines should be read in conjunction with relevant provisions of the Act and the Regulation, and in a manner that supports the objects of the Act as described in section 5 of the Act.

Commencement of the Guidelines

The Guidelines come into effect on 12 February 2021 and apply to motor accidents occurring on or after 5 October 1999 and before 1 December 2017.

The Guidelines apply until the Authority amends, revokes or replaces them in whole or in part.

Purpose of the Guidelines

The Guidelines support delivery of the objects of the Act and the Regulation by establishing clear processes and procedures, scheme objectives and compliance requirements. In particular, the Guidelines describe and clarify expectations that apply to respective stakeholders in the scheme. The Authority expects stakeholders to comply with relevant parts of the Guidelines that apply to them.

Application of the Guidelines

The Guidelines explain the operation of those sections of the Act relating to medical assessments and the Medical Assessment Service ('MAS'), a unit of the Authority. MAS was established to resolve medical

disputes as they arise during the course of a claim and usually before proceedings are commenced at the Claims Assessment and Resolution Service ('CARS') or Court.

The Guidelines apply to all new applications received at MAS on or after 12 February 2021 and all matters current at MAS on or after that date, that have not been determined, unless otherwise provided for in these Guidelines.

Compliance with the Guidelines

The Authority will monitor and review compliance with the Guidelines. Compliance and enforcement will be undertaken in accordance with the Authority's Compliance and Enforcement Policy (July 2017).

Division 1 - Introduction and registry

Chapter 1 - Introduction and interpretation

Introduction and commencement date

- 1.1 These Guidelines may be referred to as the 'Medical Assessment Guidelines' and are made pursuant to section 44(1)(d) of the *Motor Accidents Compensation Act 1999* (the Act). They apply in respect of a motor accident occurring on or after 5 October 1999 and before 1 December 2017.
- 1.2 These Guidelines replace the Medical Assessment Guidelines that came into effect on 1 October 2008 and will apply to all new applications received at MAS on or after 12 February 2021 and all disputes current at MAS on or after that date that have not been determined.
- 1.3 The development of these Guidelines meets the consultation requirements under section 44(6) of the Act.
- 1.4 As a transitional arrangement and to avoid requirements that might be unreasonable in the circumstances on any person or entity, the Authority or Proper Officer may waive observance of any part or parts of these Guidelines for any application that has been lodged with the registry before these Guidelines apply.
- 1.5 The Authority or Proper Officer may dispense with the formal requirements of these Guidelines after advising the parties to the dispute and considering any submissions by the parties.

Definitions

- 1.6 The terms used in these Guidelines have the following meanings:

1.6.1	Act	<i>Motor Accidents Compensation Act 1999</i> , as amended from time to time.
1.6.2	Allocation Review	A consideration of an application and/or reply pursuant to Chapter 9.
1.6.3	Applicant	The party that initiates the referral of a dispute.
1.6.4	Application	The means by which a party requests the referral of a dispute for assessment or applies for a review.
1.6.5	Assessment	A medical assessment of a dispute referred under section 60(1).
1.6.6	Assessor	A Medical Assessor appointed by the Authority under section 59.
1.6.7	Authority	State Insurance Regulatory Authority (SIRA)

1.6.8	CARS	Motor Accidents Claims Assessment and Resolution Service of the Authority.
1.6.9	Claims Assessor	A Claims Assessor designated by the Authority under section 99.
1.6.10	Certificate	A certificate issued under section 61(1) including the reasons for any finding under section 61(9).
1.6.11	Claimant	A person who makes or is entitled to make a claim under the Act.
1.6.12	Combined certificate	A certificate issued under section 61(10)(b) including the reasons for any finding under section 61(10)(b).
1.6.13	CTP	Compulsory Third Party
1.6.14	CTP Assist	An advisory service to assist claimants in connection with claims for statutory benefits and claims for damages, and with dispute resolution.
1.6.15	Dispute	Any dispute about a medical assessment matter referred to in section 58.
1.6.16	EDM system	An electronic dispute management system established by the Authority.
1.6.17	ED	Executive Director
1.6.18	ET Act	<i>Electronic Transactions Act 2000</i> , as amended from time to time.
1.6.19	Form	A form approved by the Authority that may contain an application and/or a reply to an application.
1.6.20	Further assessment	A further assessment under section 62.
1.6.21	Injured person	A person who has suffered an injury that is the subject of a claim made under the Act.
1.6.22	Insurer	Any party against whom a claim is made under the Act.
1.6.23	Licensed insurer	An insurer that is the holder of a license granted under Part 7.1 of the Act and in force.
1.6.24	MAS	Motor Accidents Medical Assessment Service of the Authority.
1.6.25	MAS Assessor	A Medical Assessor appointed by the Authority under section 59.

1.6.26	Matter	The application, reply and all supporting documents and correspondence held by MAS in relation to one discrete application. Each matter lodged at MAS is given a discrete matter number.
1.6.27	Officer of MAS	An officer of the Authority undertaking work in relation to medical assessments or reviews as directed by, or as delegated by the Proper Officer.
1.6.28	Person under legal incapacity	Includes: (a) a child under the age of 18 years; (b) a temporary patient, continued treatment patient or forensic patient within the meaning of the <i>Mental Health Act 2007</i> ; (c) a person under guardianship within the meaning of the <i>Guardianship Act 1987</i> ; (d) a protected person within the meaning of the <i>NSW Trustee and Guardian Act 2009</i> ; and (e) an incommunicate person, being a person who has such a physical or mental disability that he or she is unable to receive communications, or express his or her will, with respect to his or her property or affairs.
1.6.29	Proper Officer	A Proper Officer of the Authority
1.6.30	Reasons	The reasons under section 61(9) for any finding by an Assessor in a certificate.
1.6.31	Registry	That part of the Authority that receives documents for the purpose of medical assessments.
1.6.32	Reply	The means by which a respondent answers an application.
1.6.33	Respondent	A party who is required to respond to an application.
1.6.34	Review	A review of a medical assessment by a panel of Medical Assessors under section 63.

1.7 A reference in these Guidelines to a section 'X' is a reference to a section of the *Motor Accidents Compensation Act 1999 (NSW)*.

1.8 A reference to a party in these Guidelines includes the plural.

1.9 A reference in these Guidelines to a number of days is a reference to a number of working days, unless otherwise stated.

1.10 A reference in these Guidelines to a service copy of material is a reference to a separate (duplicate) set of the documents that are attached to and lodged with, or in support of, an application or reply.

1.11 The Authority will provide and maintain CTP Assist to assist claimants in connection with the medical assessment procedures under the Act.

Objects of MAS

1.12 The objects of MAS set out in clause 1.13 should be used as an aid to the interpretation of these Guidelines.

1.13 The **objects of MAS** in dealing with medical disputes referred are:

1.13.1 to provide a timely, fair and cost-effective system for the assessment of medical disputes under the *Motor Accidents Compensation Act 1999* that is accessible, transparent, independent and professional;

1.13.2 to assess medical disputes fairly and according to the substantial merits of the application with as little formality and technicality as is practicable and minimising the cost to the parties;

1.13.3 to ensure the quality and consistency of MAS decision making;

1.13.4 to make appropriate use of the knowledge and experience of MAS Assessors; and

1.13.5 to establish and maintain effective communication and liaison with stakeholders concerning the role of MAS.

1.14 The objects of MAS set out in clause 1.13 are consistent with, and are in support of the objects of the Act as can be gleaned from the Act as a whole, as amended from time to time, including from the 'Objects of the Act' set out in section 5(1) and the 'Acknowledgements of the Act' set out in section 5(2).

1.15 In exercising their functions and interpreting the provisions of these Guidelines, the Authority, Proper Officer, MAS Assessors and officers of MAS must have regard to the objects of MAS, in addition to the objects of the Act.

(Note: At the time of publication of these Guidelines, some of the Objects and Acknowledgements in those specific sections of the Act referred to above most relevant to these Guidelines include:

Objects - Section 5(1)(a) - to encourage early and appropriate treatment and rehabilitation to achieve optimum recovery from injuries sustained in motor accidents, and to provide appropriately for the future needs of those with ongoing disabilities; and

Section 5(1)(b) - to provide compensation for compensable injuries sustained in motor accidents, and to encourage the early resolution of compensation **claims**; and

Section 5(1)(e) - to keep premiums affordable, in particular, by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities.

Acknowledgements - Section 5(2)(a) - that participants in the scheme under this Act have shared and integrated roles with the overall aim of benefiting all members of the motoring public by keeping the overall costs of the scheme within reasonable bounds so as to keep premiums affordable; and

Section 5(2)(b) - that the law (both the enacted law and the common law) relating to the assessment of damages in claims made under this Act should be interpreted and applied in a way that acknowledges the clear legislative intention to restrict the level of non-economic loss compensation in cases of minor injuries; and

Section 5(2)(c)(i) - that the premium pool from which each insurer pays claims consists at any given time of a finite amount of money; and

Section 5(2)(c)(iii) - that the preparation of fully funded premiums requires a large measure of stability and predictability regarding the likely future number and cost of claims arising under policies sold once the premium is in place; and

Section 5(2)(c)(iv) - that the stability and predictability referred to in subparagraph (iii) require consistent and stable application of the law.)

Chapter 2 - Jurisdiction

2.1 An application may be made to MAS for assessment, further assessment, or a review of an assessment of a medical dispute in accordance with Part 3.4. Section 58 defines these disputes as:

2.1.1 whether treatment provided, or to be provided, to the injured person (a 'treatment dispute') is:

2.1.1.1 reasonable and necessary in the circumstances (a 'reasonable and necessary treatment dispute');

2.1.1.2 related to the injury caused by the motor accident (a 'related treatment dispute');
or

2.1.2 whether the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10% (a 'permanent impairment dispute').

2.2 An officer of MAS may reject an application or any part thereof as not duly made if the officer is satisfied that the application or part thereof does not establish that it relates to one of the above types of disputes.

2.3 An officer of MAS may reject an application made on behalf of, or in respect of, a personal injury claim made by a person who has died after the claim has been made, unless it is accompanied by a grant of probate or letters of administration or equivalent, and confirmation that the estate seeks to pursue the claim.

Chapter 3 - Referrals to the MAS registry

3.1 The Authority shall establish and maintain a registry for the referral of applications:

3.1.1 The MAS office is located at 1 Oxford Street, Darlinghurst, Sydney, and is open to the public for lodgement of documents and general enquiries from 8:30am to 5:00pm except on Saturdays, Sundays and public holidays. The registry may be kept open to the public for business or closed for business at such times and on such days as the Executive Director may direct.

3.1.2 MAS may make provision for lodgement of documents electronically and also outside the usual opening hours. Any documents lodged electronically after 11:59pm will be deemed to have been received on the next day that DRS is open to the public for lodgement of documents in person.

3.2 A claimant may lodge an application with MAS by:

3.2.1 **application form** – by completing the approved MAS application form, and lodging it with MAS by post, email, or in person;

3.2.2 **online application process** – by completing an approved online MAS application process through any electronic dispute management (EDM) system; or

3.2.3 **telephone** – a claimant who is making an application may contact MAS by telephone to make an application, which MAS will confirm in writing to the parties, confirming the nature and extent of the application.

3.3 MAS will, as soon as practicable, and preferably within two working days, acknowledge receipt of the application, and will give notice of the application to the other party, providing them with access to the application and all supporting documents and materials.

3.4 An insurer or its representative may only lodge an application with MAS by completing an approved online MAS application through the electronic dispute management (EDM) system. If the EDM system is unavailable at the time of lodgement, the insurer may complete a MAS application form and lodge it with MAS by post, email or in person.

The contact details for MAS are:

Phone: 1800 34 77 88

Address: Level 19, 1 Oxford St, Darlinghurst, NSW 2010

Email: drsenquiries@sira.nsw.gov.au

3.5 The registry shall, notwithstanding clause 3.1.1, be kept open to the public for business or closed for business, at such times and on such days as the Authority shall direct.

3.6 The Authority shall arrange for all applications made under these Guidelines to be allocated a matter number and registered. All subsequent correspondence concerning the application is to quote that matter number.

3.7 All correspondence to, and communication with, an Assessor in relation to a medical dispute, either in respect of a current or concluded assessment, must, unless the Authority, Proper Officer or the Assessor directs otherwise, be directed to the Assessor care of the registry.

3.8 If a legal practitioner or agent represents the claimant in respect of the medical dispute being assessed:

3.8.1 it is sufficient notification for the Authority, Proper Officer, an officer of MAS or an insurer to send any document required to be sent to the claimant, to the legal practitioner or agent; and

3.8.2 the Authority, Proper Officer or an officer of MAS may, notwithstanding that the claimant has legal or other representation, contact the claimant directly in relation to a medical assessment.

3.9 If a legal practitioner or agent represents the insurer in respect of the medical dispute being assessed:

3.9.1 it is sufficient notification for the Authority, Proper Officer, an officer of MAS or a claimant to send any document required to be sent to the insurer to the legal practitioner or agent; and

3.9.2 the Authority, Proper Officer or an officer of MAS may, notwithstanding that the insurer has legal or other representation, contact the insurer directly in relation to a medical assessment.

3.11 If a party, represented by a legal practitioner or agent, requests MAS to do so, the Authority, Proper Officer or an officer of MAS may at their discretion send a copy of any document required to be sent to that party, to the party direct, in addition to that party's legal representative or agent.

3.12 If after an application or reply is lodged at MAS, a party retains a legal practitioner or agent to represent them, or changes their legal practitioner or agent, that party must notify the Authority and the other party in writing within 5 days of the date of the retainer or change in representation.

3.13 If after an application lodged at MAS has been allocated to an Assessor, a party retains a legal practitioner or agent to represent them, or changes their legal practitioner or agent, that party must notify the Authority and the other party in writing within 5 days of the date of the retainer or change in representation.

Exchange and lodgement of application and reply

What must an application include?

3.14 An application to MAS must include:

3.14.1 all requirements specified in any approved application form, or

3.14.2 all requirements specified in any approved online application process through any EDM system, or

3.14.3 all information requested by an officer of MAS while a telephone application is being made.

3.15 A claimant making an application should list all documents relevant to the application. Copies of documents the claimant has already provided to the insurer do not need to be attached to the application. The claimant must attach copies of any documents or materials not previously provided to the insurer and on which the claimant seeks to rely.

3.16 If the insurer is making the application, the insurer must attach to the application all of the documents or materials in their possession relevant to the dispute. When providing the documents through the EDM, the insurer must upload the documents individually and categorise them, by selecting the most relevant category for each document. Failure to categorise documents lodged by an insurer, may result in an application being rejected.

3.17 MAS may decline to accept an application if the application does not comply with the above, and may notify the parties as soon as practicable, providing brief reasons for its decision.

Can an applicant withdraw or amend an application?

3.18 An applicant may withdraw or amend an application to MAS online, by letter, telephone, email, or in person at any time before MAS notifies the parties of the outcome. DRS will confirm the withdrawal or amendment of the application in writing to the parties.

How is a reply lodged?

3.19 A reply should be lodged as soon as practicable by a respondent and within 20 days of the application being sent by MAS.

3.20 A claimant may lodge a reply to an application with DRS by:

3.20.1 **reply form** – by completing the approved DRS reply form, and lodging it with MAS by post, email, or in person

3.20.2 **online reply process** – by completing an approved online MAS reply process through any EDM system, or

3.20.3 **telephone** – by contacting DRS by telephone, which MAS will confirm in writing to the parties, confirming the nature and extent of the claimant’s reply.

3.21 An insurer or their representative may lodge a reply with MAS by completing an approved online DRS application through the EDM. If the EDM system is unavailable at the time of lodgement, the insurer can complete a DRS application form and lodge it with DRS by post, email or in person.

3.22 As soon as practicable, DRS will acknowledge receipt of the reply to the respondent, and will give notice of the reply to the applicant, providing them with access to the reply and all supporting documents and materials.

3.23 A reply lodged with MAS after the time limit in clause 3.19 has expired may be accepted by the Authority or Proper Officer if they are satisfied that the respondent has a reasonable explanation for the delay. A reply sought to be lodged after the time limit in clause 3.19 has expired must attach an explanation for the delay, and must first have been provided to the applicant who is to be given an opportunity to make a submission on the issue.

What must a reply include?

3.24 A reply to an application must include:

3.24.1 all requirements specified in any approved reply form for responding to an application, or

3.24.2 all requirements specified in any approved online reply process through any EDM system for responding to an application, or

3.24.3 all information requested by an officer of DRS while a telephone reply is being made.

3.25 A claimant who is lodging a reply should list all documents relevant to their reply, but they do not need to attach copies of documents or materials they have previously provided to the insurer. The claimant only needs to provide copies of documents or materials not previously provided.

3.26 The insurer must provide to DRS all of the documents or materials in their possession relevant to the application and reply, including documents and materials listed in the reply that the claimant has previously supplied to the insurer. After receiving the claimant’s reply, the insurer must upload each of the listed documents individually and categorise them, by selecting the most relevant category for each document. Failure to categorise documents may result in the reply being rejected.

3.27 MAS may decline to accept a reply if the reply does not comply with clause 3.24 (above).

3.28 MAS may proceed to hear and determine an application in the absence of a reply.

3.29 If the reply is rejected, an officer of MAS shall issue a rejection notice to both parties setting out brief reasons for the rejection within 5 days of receipt of the reply in the registry.

Expedited applications

3.30 Either party to a dispute may apply at any time for a matter to be expedited by doing so in writing to MAS, and giving notice to the other party setting out full details of the basis on which expedition of the application is sought

3.31 In considering whether they are satisfied that an application for expedition should be granted, the Proper Officer shall consider all relevant factors and circumstances surrounding the matter including, but not limited to:

3.31.1 the objects of the Act;

3.31.2 the objects of MAS;

3.31.3 the interests of both parties to the matter; and

3.31.4 the interests of other parties to other disputes, particularly regarding the equity of prioritising the matter seeking expedition ahead of other matters.

3.32 If the Proper Officer is satisfied that the matter warrants being expedited, having considered any submissions from the parties, the Proper Officer will take all reasonable steps to ensure the matter is dealt with by MAS as quickly as possible.

3.33 The types of exceptional circumstances that may warrant an application for expedition being accepted may include, but are not limited to, issues such as:

3.33.1 Claimants with seriously deteriorating health requiring an urgent assessment;

3.33.2 claimants who are only able to remain in the country for a limited period of time due to matters outside their control; and/or

3.33.3 claimants with matters currently being heard before a Court or CARS.

Chapter 4 - Interpreters

4.1 If a party indicates that an interpreter is required, an officer of MAS will arrange for an interpreter to be present at any assessments.

4.2 Interpreters accredited by National Accreditation Authority for Translators and Interpreters (NAATI) should be used during the course of an assessment if an interpreter is required.

4.3 In the absence of a NAATI interpreter, a non-NAATI interpreter may be used at the discretion of the Authority or Proper Officer, as long as that person is not a person accompanying the claimant to a medical examination.

Chapter 5 - Time

Abridgement or extension of time

5.1 The Authority or Proper Officer may, if the circumstances justify, and on terms, abridge or extend any time limit fixed by these Guidelines, including any time limit affecting the Authority, Proper Officer, an officer of MAS, or an Assessor.

5.2 The Authority or Proper Officer may extend time under clause 5.1 after the time expires, whether or not an application is made before the time expires, or at all.

Reckoning of time

5.3 Any period of time fixed by these Guidelines for the doing of any act or in connection with any assessment or request by the Authority, Proper Officer or an Assessor shall be reckoned in accordance with clauses 5.4, 5.5 and 5.6.

5.4 Where a time of 1 day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.

5.5 Where, apart from this sub-clause, the period in question, being a period of 5 days or less, would include a day on which the registry is closed for lodgement in person, that day shall be excluded.

5.6 Where the last day for doing a thing is a day on which the registry is closed for lodgement in person, the thing may be done on the next day on which the registry is open for lodgement in person.

Chapter 6 - Delivery of documents

6.1 For matters lodged other than via the EDM system, for the purpose of these Guidelines where a claimant or insurer notifies in any document lodged an address for delivery or receipt of documents, then leaving a document at that address, or sending a document to that address, shall be taken to be received by the person as follows:

6.1.1 in the case of a physical address, on the day the document is left at that address;

6.1.2 in the case of a physical or postal address, on a day 5 days after the document is sent;

6.1.3 in the case of an email address, on the day the email or email attachment is sent if sent before 5:00pm, or on the day after the email or email attachment is sent if sent at or after 5:00pm;
or

6.1.4 in the case of a facsimile number, on the day the facsimile is sent if sent before 5:00pm, or on the day after the facsimile is sent if sent at or after 5:00pm.

Chapter 7 - Electronic case management system

Establishment of an EDM system

7.1 The Authority may establish an EDM system to help support the objects of MAS, including to:

7.1.1 enable applications and replies to MAS to be created, lodged, exchanged and accessed in an electronic form

7.1.2 enable documents with respect to applications to MAS to be created, exchanged, lodged, issued and accessed in electronic form by the parties and MAS

7.1.3 enable parties to applications to MAS to communicate in an electronic form with MAS and with other parties

7.1.4 enable information concerning the progress of applications to MAS to be provided in an electronic form to parties to those disputes, and/or

7.1.5 enable officers of MAS and decision-makers to communicate in an electronic form with parties to applications to MAS.

7.2 MAS may issue an information sheet for the use of the EDM system, and establish requirements for persons to become registered users of the EDM system, in addition to decision-makers and officers of MAS.

7.3 Such an information sheet may specify, among other things, the level of access to the EDM system to which persons or specified classes of persons are entitled, the conditions of use of the EDM system applicable to persons generally or persons of any such class, the security methods by which persons using the EDM system are identified and verified, and how users gain access to the EDM system.

7.4 Subject to any information sheet, a person other than a decision-maker and an officer of MAS may not use the EDM system for a particular application unless they are a registered user of the EDM system and is:

7.4.1 a party to the application to MAS, or

7.4.2 a legal practitioner or agent representing a party to the application to MAS.

7.5 In relation to any application, the level of access to the EDM system to which a user is entitled, and the conditions of use applicable to a user, are subject to any decision of MAS.

7.6 Documents and information lodged via the EDM system may be dealt with in accordance with the provisions of the *Electronic Transactions Act 2000* (NSW).

7.7 When MAS sends documents or forwards correspondence to a party who is a registered user of the EDM system, it will generally only do so via electronic communication to that party through the EDM system.

7.8 The *Motor Accidents Compensation Act 1999* may prescribe methods for service of documents (see Sections 222, 223 and 224 of the Act).

Division 2 - Primary application types

Chapter 8 - Application for medical assessment (section 60)

8.1 An application for assessment, or reply to an application, must:

8.1.1 be in the form approved by the Authority; or

8.1.2 be in a form as directed by the Authority or Proper Officer; and

8.1.3 set out or be accompanied by the particulars and information required by that form or as otherwise directed by the Authority or Proper Officer.

Treatment disputes (MAS forms 1A and 1R)

8.2 An application for assessment of a treatment dispute may be lodged at any time, and should be lodged as soon as practicable after the treatment dispute arises between the parties, to enable the outcome of the assessment of the treatment dispute to have as early an opportunity as possible of influencing the treatment and rehabilitation of the claimant.

8.3 The parties must have first made some attempt to resolve the specific treatment dispute in question before the dispute will be assessed by MAS.

8.4 Before allocating the application for assessment of a treatment dispute to an Assessor, the Proper Officer will require evidence from the parties to substantiate that:

8.4.1 the claimant has requested specific treatment and the insurer disputes that the treatment is reasonable and necessary in the circumstances or that the treatment relates to the injury caused by the motor accident; and

8.4.2 the insurer has had a reasonable opportunity to respond to the request from the claimant and either has not responded, or has rejected the specific treatment requested by the claimant.

8.5 In conducting an Allocation Review pursuant to Chapter 9 the Proper Officer may seek such submissions, clarifications, or further information from the parties to the assessment that the Proper Officer believes will assist in considering that Allocation Review.

Permanent impairment disputes (MAS forms 2A and 2R)

8.6 An application for assessment of a permanent impairment dispute may be lodged at any time. If there is a dispute about whether the claimant is entitled to claim damages for non-economic loss in accordance with section 132(1), the application should be lodged as soon as possible after the dispute arises. Submitting an application as soon as possible after a dispute arises will assist the parties in attempting to resolve the dispute as a whole.

(Note: In the vast majority of claims the degree of impairment is able to be accurately assessed at 12-18 months post-accident. MAS strongly recommends that applications for assessment of impairment should be lodged by 18 months post-accident at the latest.)

8.7 The parties must have first made some attempt to the dispute about whether or not the claimant is entitled to claim damages for non-economic loss before the permanent impairment dispute will be assessed by MAS.

8.8 As required by the Claims Handling Guidelines, where the insurer rejects a claimant's claim to be entitled to damages for non-economic loss, as it believes the claimant's degree of whole person permanent impairment is not greater than 10%, the insurer should give written reasons to the claimant for that

rejection and advise the claimant of their right to apply to MAS for assessment of the permanent impairment dispute.

8.9 Before allocating the application for assessment of a permanent impairment dispute to an Assessor, the Proper Officer will require evidence from the parties to substantiate that:

8.9.1 the claimant has put the insurer on notice that the claimant believes the claimant is entitled to damages for non-economic loss by either:

8.9.1.1 making a request or offer of settlement to the insurer seeking an entitlement to damages for non-economic loss;

8.9.1.2 requesting that the insurer concede that the claimant is entitled to claim damages for non-economic loss; or

8.9.1.3 indicating to the insurer that it believes the claimant's degree of whole person impairment is greater than 10%.

8.9.2 the insurer has had an opportunity to respond to the claimant's claim to be entitled to damages for non-economic loss and either has not responded, or has rejected the claim.

8.10 The insurer's written reasons for rejecting the claimant's claim to be entitled to damages for non-economic loss should be included in any application to MAS for assessment of a permanent impairment dispute lodged by the claimant or insurer.

8.11 In conducting an Allocation Review pursuant to Chapter 9 the Proper Officer may seek such submissions, clarifications, or further information from the parties to the assessment that the Proper Officer believes will assist in considering that Allocation Review.

Division 3 - Allocations and assessments

Chapter 9 - Allocation

Allocation Review

9.1 When an application is made under Chapters 8, 14, 15, or 16, an officer of MAS is to arrange for the Allocation Review of the matter to determine:

9.1.1 the eligibility of the dispute for assessment in accordance with Chapter 2;

9.1.2 whether any application and/or reply are properly made in accordance with Chapter 3 and Chapters 8, 14, 15, and 16 as far as they apply to the dispute;

9.1.3 whether further information or documentation is required (see clause 9.4);

9.1.4 whether a matter is ready for assessment or whether the assessment should be deferred (see clause 9.7);

9.1.5 whether the application should be dismissed (see Chapter 10); and

9.1.6 the way in which an assessment is to proceed (see clause 9.10).

9.2 The Proper Officer is to ensure that within 10 days of the due date for a reply under clause 3.19, the parties are advised of the outcome of the Allocation Review in accordance with the remainder of this chapter.

9.3 If no reply is received within the time provided, referred to in clause 3.19, the Proper Officer may allocate the matter in the absence of a reply.

Further information or documentation required

9.4 In the case of clause 9.1.3, if an officer of MAS is satisfied that further information or documentation is required or is likely to assist in the resolution of the dispute, the officer may:

9.4.1 request that further information or documentation be provided and notify the other party; and

9.4.2 proceed with processing the application in the absence of the requested further information or documentation.

9.5 The Proper Officer may, but only with the consent of the claimant and the insurer, communicate with any of the injured person's treating health practitioners or service providers in order to clarify the issue or issues in dispute or to identify the existence of relevant documentation.

9.6 The Proper Officer or an Assessor may, at their discretion, communicate with any of the claimant's treating health practitioners in relation to health or physical safety issues noted by an Assessor as being of an urgent or serious nature, where necessary to prevent or lessen a serious or imminent threat to life or health, or with the consent of the claimant.

Defer allocation

9.7 In the case of clause 9.1.4, an officer of MAS may defer the allocation of the dispute, for a period not exceeding 6 months at a time in circumstances where the officer of MAS is satisfied that:

9.7.1 further information or documentation has been requested (see clause 9.4);

9.7.2 there are other issues in dispute or likely to be in dispute which would more conveniently be determined at the same time;

9.7.3 there has not been a genuine attempt by one or both parties to settle the dispute, and it may be capable of resolution (see clause 9.8);

9.7.4 a MAS Assessor has previously declined under section 132(3) to assess the claimant's permanent impairment arising from the injuries sustained, and any pre-conditions to the impairment becoming assessable that were identified by the Assessor, have not as yet been satisfied; or

9.7.5 there are other good reasons to defer the allocation of the matter.

9.8 In the case of clause 9.7.3, if the officer of MAS is satisfied that the matter is capable of resolution by the parties, the officer of MAS may defer allocating the dispute to an Assessor for a period not

exceeding 2 months to allow the parties an opportunity to settle the matter and/or the claim. Either party can apply to MAS to proceed with the assessment, at any time, if settlement negotiations fail.

9.9 If the allocation of a matter is deferred in total for more than 6 months, it will be marked as a 'deferred' matter and the Proper Officer or an officer of MAS may from time to time conduct fresh Allocation Reviews of the matter as needed, seeking submissions from the parties, to assess the readiness of the matter for allocation and to consider whether or not the matter would more appropriately be dismissed in accordance with Chapter 10, rather than continuing to be deferred.

Allocation for assessment

9.10 When a dispute is considered ready to be allocated for assessment, an officer of MAS shall determine the way in which an assessment is to proceed and may:

9.10.1 request that a claimant attend a medical or other examination or examinations at a designated location (see clause 9.11);

9.10.2 request that one or more MAS Assessors assess the dispute on the documentary material provided, having considered any submissions from the parties on this issue (see clauses 9.11 and 9.12);

9.10.3 request that the parties attend a conference to clarify issues and/or explore settlement of the dispute (see clause 9.13); or

9.10.4 refer the matter to an officer of MAS to attempt to facilitate resolution of the dispute (see clause 9.14).

9.11 In the case of clauses 9.10.1 and 9.10.2, an officer of MAS shall:

9.11.1 refer the dispute to one or more MAS Assessors having regard to the nature of the injury and any continuing disabilities, the nature of the dispute, the location of the claimant, the location of the Assessor, and any other relevant fact or issue;

9.11.2 in permanent impairment disputes ensure that impairment resulting from a physical injury is assessed separately from any impairment resulting from psychological injury;

9.11.3 make arrangements with the Assessor or Assessors to whom the dispute has been allocated for an examination or an assessment on the documentary material provided;

9.11.4 notify the parties of the name of the Assessor or Assessors allocated and the time, date and location of any examinations; and

9.11.5 provide the Assessor or Assessors with:

9.11.5.1 a copy of the application and reply and all documents and material in support of the application and reply;

9.11.5.2 the notification sent to the parties under clause 9.11.4;

9.11.5.3 a copy of any other applications and replies and/or MAS certificates in relation to the same claimant, not limited to the same matter, after the parties have been provided with a copy of these documents; and

9.11.5.4 details of any other Assessor allocated to also assess the dispute and the injuries referred to them, if the dispute is to be assessed by more than one Assessor.

9.12 In the case of clause 9.10.2, an officer of MAS may determine that a matter be assessed without a medical examination if the officer of MAS is satisfied that:

9.12.1 the parties consent;

9.12.2 an examination is considered unnecessary or impractical; or

9.12.3 there are other reasons why an examination is not feasible or appropriate.

9.13 In the case of clause 9.10.3, the Proper Officer may request that the parties attend a conference to clarify issues and/or explore settlement of the dispute, by notifying the parties of the proposed time, date and location of the conference.

9.14 In the case of clause 9.10.4, the Proper Officer may refer the dispute to an officer of MAS to attempt to facilitate resolution of the dispute.

9.15 A party may, within 10 days of the date of sending of notification of the name of the Assessor, apply to the Proper Officer to have the dispute reallocated to a different Assessor. Such an application must be made in writing and be accompanied by a detailed statement of facts and/or reasons as to why the Assessor might no longer be an appropriate Assessor to assess the matter, and a copy must first be provided to all other parties to the matter.

9.16 The Proper Officer shall within 5 days of receiving an application under clause 9.15 make a decision on such an application and may re-allocate the dispute if satisfied that there are reasonable grounds for believing that the Assessor might no longer be an appropriate Assessor to assess the matter.

9.17 The Proper Officer shall within 5 days of making such a decision under clause 9.16 advise the parties of the decision, providing brief reasons.

9.18 The Proper Officer may reallocate a matter to a different Assessor for assessment if the original Assessor becomes unwell, or is otherwise unable to assess the matter or is no longer an appropriate Assessor to assess the matter.

Chapter 10 - Dismissal

10.1 The Proper Officer may at any stage dismiss an application for medical assessment in circumstances where they are satisfied that:

10.1.1 the applicant has withdrawn the application;

10.1.2 the application is not likely to be ready to be assessed within the next 12 months;

10.1.3 the applicant fails without reasonable excuse to comply with the Proper Officer or Assessor's directions;

10.1.4 it appears that the claimant is not pursuing or prosecuting the application or the claim;

10.1.5 the application is frivolous, vexatious, misconceived or lacking in substance;

10.1.6 the application is being used for an improper purpose or is otherwise an abuse of process;
or

10.1.7 the application is made by a person who has died after the application was referred to MAS, unless a copy of the grant of probate or letters of administration or equivalent are provided, and the Proper Officer is satisfied that the estate seeks to pursue the CTP claim or the application.

10.2 A matter may be dismissed on the application of a party, or of the Proper Officer's own initiative, by the Proper Officer, after having given all parties the opportunity to make submissions about the proposed dismissal of the matter.

Chapter 11 - Assessment procedure

Assessor's role

11.1 In conducting an assessment an Assessor, including a member of any Review Panel, may determine the Assessor's own procedure and is not bound by the rules of evidence and may inquire into any issue in such manner as they think fit.

11.2 The Assessor is to take such measures as are reasonably practicable to:

11.2.1 ensure that the claimant understands the nature of the application and the issues to be considered, the role of the Assessor as an independent decision-maker, and the conclusive nature of any certificate that is to be issued; and

11.2.2 explain to the claimant any aspect of the procedure of any medical examination that the claimant does not apparently understand.

11.3 The Assessor is to inform him or herself on any issue as they see fit.

11.4 The Assessor is to take into account the objects of the Act and objects of MAS at all times.

11.5 The Assessor is to progress the assessment of the dispute as quickly, fairly and cost effectively as is practicable.

Persons who may be present during medical examinations

11.6 A parent, legal guardian, carer or other support person may be present during a medical assessment examination if the person being examined is a person under a legal incapacity. If the person being examined is not a person under a legal incapacity then a support person may only be present during a medical assessment examination if the Assessor conducting the examination is satisfied it is reasonable in the circumstances.

11.7 Legal, medical or other representatives of the claimant or any other party to a dispute may not be present during a medical examination unless the Proper Officer gives prior approval and is satisfied that the circumstances warrant it.

11.8 During the conduct of a medical examination any person other than the claimant who has been permitted to be present may not respond to questions or speak on behalf of the claimant, unless invited to do so by the Assessor, unless the person is a parent, legal guardian, carer or other support person of a person being examined who is a person under a legal incapacity.

Failure to attend medical assessment examination

11.9 If a claimant becomes aware that they will be unable to attend a medical assessment examination or Review Panel examination arranged for them, the claimant should advise MAS immediately.

11.10 MAS may then cancel the examination and re-schedule a new examination with the same Assessor or another Assessor. This will enable the dispute to be assessed as promptly as possible, and minimise the cost of cancellation and non-attendance fees payable by MAS to Assessors and interpreters.

11.11 If a claimant notifies MAS under clause 11.9 that they will be unable to attend an examination:

11.11.1 72 hours or more before the scheduled time for an examination, the claimant will not be required to pay a cancellation fee, as that allows sufficient time for MAS to cancel the examination and to avoid MAS being required to pay any cancellation fees to the Assessor and any interpreter; or

11.11.2 less than 72 hours before the scheduled time for an examination, the claimant will be required to pay a cancellation fee, equal to the amount of any cancellation fees that MAS is required to pay to the Assessor and any interpreter.

11.12 If a claimant fails to notify MAS under clause 11.9 that they will be unable to attend a medical assessment examination and the claimant fails to attend that examination at all, or attends that examination late resulting in the assessment being cancelled by the Assessor, the claimant will be required to pay a cancellation fee, equal to the amount of any cancellation fees that MAS is required to pay to the Assessor and any interpreter.

11.13 If MAS is required to pay a cancellation fee to an Assessor or interpreter under clause 11.11, or 11.12, MAS will, within 5 days of the scheduled examination, send a tax invoice to the claimant seeking payment of the cancellation fee.

11.14 A new date for an examination will be scheduled if, within 1 calendar month of the cancellation fee invoice being sent to the claimant, the Proper Officer is satisfied that:

11.14.1 MAS has received payment from the claimant of the full amount of the cancellation fee;

11.14.2 MAS has received a signed 'Irrevocable Authority and Direction' in a form approved by the Authority, addressed to the insurer directing the insurer to pay the full amount of the cancellation fee from the claimant's settlement monies when they are paid out;

11.14.3 the claimant has provided to MAS in writing a reasonable excuse for the non-attendance; or

11.14.4 MAS is satisfied the payment of the cancellation fee would cause the claimant financial hardship.

11.15 If the Proper Officer is not satisfied that the requirements set out in clause 11.14 have been satisfied within 1 calendar month of the cancellation fee invoice being sent to the claimant, the Proper Officer will determine how the assessment of the dispute will proceed and may decide not to re-schedule a new date for an examination and may instead refer the dispute to an Assessor to be assessed without an examination under clause 9.10.2 and clause 9.12 on the documentary material provided.

11.16 If the claimant subsequently becomes liable to pay another cancellation fee under clause 11.11 or clause 11.12 in relation to any other examination regarding the same dispute or any other dispute, the

Proper Officer will determine how the assessment of that dispute will proceed and may decide not to re-schedule a new date for an examination and may instead refer the dispute to an Assessor to be assessed without an examination under clause 9.10.2 and clause 9.12 on the documentary material provided.

11.17 When re-scheduling a new date for such an examination the dispute may be referred to the same Assessor or a different Assessor.

11.18 If the Proper Officer is satisfied under clause 11.14.2 that MAS has received a signed 'Irrevocable Authority and Direction' in a form approved by the Authority, MAS will provide a copy of that 'Irrevocable Authority and Direction' to the insurer within 5 days of receiving that document.

Chapter 12 - Documentation and other supporting material

12.1 Whenever a party submits copies of documents and other material (including videotape, CD, DVD, electronic image or file, film or photographs) in support of an application or reply, the party lodging the material must have already provided a copy of the material to each other party to the dispute.

12.2 Only copies of documents are to be lodged at MAS.

12.3 An officer of MAS, or any Assessor is not to take into consideration any documentation or information that has not been provided to the other party, except as provided in this chapter.

Language of documents and other supporting material

12.4 All documents and other supporting material lodged must be in the English language, except where the document or other supporting material:

12.4.1 is accompanied by an English translation of the document; and

12.4.2 the English translation is supported by a declaration, made by the translator, in the English language, that the translation is an accurate translation of the document or other supporting material.

12.5 MAS may reject any documentation or other supporting material which does not comply with clause 12.4.

Surveillance images

12.6 In the case of surveillance images in any format:

12.6.1 the images are to be provided to MAS in an unedited digital format; and

12.6.2 any investigator's or loss adjuster's report concerning those surveillance images must be provided with the images when provided to each other party, and must be lodged at MAS with the images; and

12.6.3 surveillance images cannot be lodged at MAS or submitted to an Assessor unless they have been provided to each party.

12.7 If surveillance images have been provided by an insurer in support of an application or a reply, the claimant will be offered an opportunity to respond to the surveillance images and unless the claimant indicates otherwise, the claimant will be taken to have no objection to the Assessor considering the surveillance images.

Radiological scans

12.8 In the case of X-rays, Computerised Tomography (CT or CAT scans), Magnetic Resonance Imaging or other radiological or similar investigations:

12.8.1 all documents including any film or scans and any associated reports must be plainly identified and listed by the parties in the application or reply in order for them to be considered by the Assessor;

12.8.2 original film or scans are not to be submitted to the MAS registry without the consent of the Proper Officer; and

12.8.3 any original films or scans listed by the parties in the application or reply must be taken by the claimant, or sent by the insurer, to any relevant medical examination with an Assessor.

12.9 Irrespective of whether they have been provided to the other party, a MAS Assessor may take into consideration any such radiological scans and their accompanying reports that are taken to the examination, and:

12.9.1 where these documents have not previously been included in the documentation supporting the application or reply exchanged by the parties, the MAS Assessor will list those documents in their certificate and will attach a copy of all such reports to their certificate; and

12.9.2 the party in possession of those scans shall make those scans available to the other party to inspect on request.

Late additional documents

12.10 No additional documents or information sought to be added to the list of documents to be referred to the Assessor may be lodged by either party after the lodgement of their application or their reply, except:

12.10.1 by consent of the other party;

12.10.2 in response to a specific request or direction from the Proper Officer, an Assessor or an officer of MAS, in circumstances where the Proper Officer is satisfied that any such document would be of assistance to the conduct of the assessment; or

12.10.3 if the Proper Officer is satisfied that exceptional circumstances exist; and any such documents must have been provided to the other party.

Chapter 13 - Certificates

13.1 A certificate required under clause 13.3, 13.5 or 13.7 is to be provided by the Assessor to MAS within 15 days of the completion of the medical examination or assessment on the papers.

13.2 The certificate shall include written reasons for the determination in the form approved by the Authority.

Treatment disputes

13.3 An Assessor or Assessors to whom a treatment dispute is referred is to send to MAS a certificate certifying:

13.3.1 in the case of a reasonable and necessary treatment dispute under section 58(1)(a), whether the particular treatment in dispute in relation to the injuries caused by the accident, was or is reasonable and necessary in the circumstances; and/or

13.3.2 in the case of a related treatment dispute under section 58(1)(b), whether the particular treatment in dispute relates to the injury caused by the accident.

13.4 An officer of MAS shall provide a copy of any such certificate to all parties, and to a Claims Assessor if the medical dispute relates to a claim with a current general assessment allocated to a Claims Assessor, within 5 days of receipt.

Permanent impairment disputes

No combined certificate required

13.5 An Assessor to whom a permanent impairment dispute is referred requiring either a psychiatric or psychological injury assessment, or requiring a physical injuries assessment by a single Assessor, that does not require the issuing of a combined certificate, is to send to MAS a certificate certifying:

13.5.1 the list of the injuries referred and whether they were each found to have been caused by the accident;

13.5.2 the degree of permanent impairment of the injured person as a result of each of those injuries referred that were found to be caused; and

13.5.3 whether the degree of permanent impairment of the injured person as a result of those injuries referred that were found to be caused, is greater than 10%.

13.6 An officer of MAS shall provide a copy of any such certificate to all parties, and to a Claims Assessor if the medical dispute relates to a claim with a current general assessment allocated to a Claims Assessor, within 5 days of receipt.

Combined certificate required

13.7 An Assessor to whom a permanent impairment dispute is referred regarding physical injuries that requires more than one assessment, by more than one Assessor, and that requires the issuing of a combined certificate (see clause 13.9), is to send to MAS a certificate certifying:

13.7.1 the list of the injuries referred and whether they were each found to have been caused by the accident;

13.7.2 the degree of permanent impairment of the injured person as a result of each of those injuries referred that were found to be caused.

In this circumstance, no certificate is required from the single Assessor certifying whether the degree of permanent impairment of the injured person as a result of those injuries referred is greater than 10%, as a combined certificate is required combining the assessments of more than one MAS Assessor to address that issue.

13.8 An officer of MAS shall provide a copy of any such certificate to all parties, and to a Claims Assessor if the medical dispute relates to a claim with a current general assessment allocated to a Claims Assessor, within 5 days of receipt of the combined certificate, enclosing at the same time the combined certificate under clause 13.9 and all single Assessor's certificates under clause 13.7.

Combined certificate

13.9 In the case of clause 13.7, within 5 days of the receipt of all single Assessors' certificates on a dispute, the Proper Officer will refer the dispute to an Assessor for the completion of a combined certificate certifying whether the degree of permanent impairment of the injured person as a result of those injuries referred is greater than 10%.

13.10 A combined certificate required under clause 13.9 is to be provided by the Assessor to MAS within 5 days of the referral of the dispute to the Assessor.

13.11 An officer of MAS shall provide a copy of any such combined certificate to all parties, and to a Claims Assessor if the medical dispute relates to a claim with a current general assessment allocated to a Claims Assessor, within 5 days, enclosing at the same time all single Assessor's certificates under clause 13.7.

Assessor declines to assess

13.12 In the case of the assessment of a permanent impairment dispute an Assessor may under section 132(3) decline to assess the impairment of one or more injuries referred, if the Assessor is unable to assess the impairment because the Assessor is satisfied that the impairment caused by the injury has not yet become permanent.

13.13 When an Assessor does decline to assess one or more injuries referred, the Assessor is to include in the certificate they send to MAS under either clause 13.5 or 13.7 a statement certifying:

13.13.1 the list of the injuries that they have declined to assess;

13.13.2 detailed reasons for declining to assess the injuries; and

13.13.3 an estimate of when the Assessor believes the impairment caused by those injuries is expected to become permanent and capable of assessment.

13.14 When an Assessor does decline to assess one or more injuries referred, the Assessor is to certify that fact (see clause 13.13) within the certificate required to be sent to MAS under either clause 13.5 or 13.7.

13.15 In addition to the certification required under clause 13.13, the Assessor is still required to issue the certificates of assessment required by either clause 13.5 or 13.7 certifying the outcome of the assessment for all injuries that the Assessor did assess, excluding those injuries the Assessor declined to assess.

13.16 When an Assessor issues a certificate under clause 13.13 the Proper Officer is to review the matter and is to determine how the matter will proceed after considering any submissions of the parties and in particular whether the application shall be:

13.16.1 allocated again, in accordance with clauses 9.10 to 9.18;

13.16.2 deferred, in accordance with clauses 9.7 and 9.8 to allow the provision of further information or documentation under clauses 9.4 to 9.6 and/or marked as a 'long deferral' matter in accordance with clause 9.9; or

13.16.3 dismissed, in accordance with Chapter 10.

Privacy

13.17 MAS assessments are conducted in private and are not open to the public, under clause 11.6, 11.7 and 11.8, and a certificate and/or statement of reasons issued by an Assessor or Review Panel are not available to the public.

Incomplete certificates

13.18 Section 61(1) requires that a MAS Assessor to whom a dispute is referred is to give a certificate 'as to the matters referred for assessment'. If a MAS Assessor or Review Panel provides a certificate to MAS which does not comply with this requirement, an officer of MAS may remit the matter to the Assessor or Review Panel to ensure it complies with section 61(1).

13.19 The officer of MAS may make such a request of their own initiative prior to the issue of the certificate to the parties, or on the request of the parties.

13.20 Examples of incomplete certificates include, but are not limited to:

13.20.1 disputes and/or injuries referred;

13.20.2 disputes and/or injuries not referred;

13.20.3 unsigned certificates submitted; or

13.20.4 certificates and/or parts of certificates omitted.

13.21 In considering whether or not the certificate may be incomplete the officer of MAS may seek submissions from all parties to the dispute.

13.22 On becoming aware of an incomplete certificate prior to the issue of such a certificate, the officer of MAS will, within 5 days, refer the matter back to the MAS Assessor or Review Panel concerned. The officer of MAS will advise the parties that such a request has been made to the MAS Assessor or Review Panel concerned.

13.23 The MAS Assessor or Review Panel may require a re-examination of the claimant.

13.24 The MAS Assessor or Review Panel may issue a completed certificate satisfying the requirements of section 61(1). If a completed certificate is issued, the completed certificate is to:

13.24.1 be sent to MAS within 5 days of the request or any re-examination;

13.24.2 replace any previous certificate sent to MAS;

13.24.3 have the same status as any other certificate; and

13.24.4 an officer of MAS shall provide a copy of any such certificate to all parties within 5 days of receipt.

Division 4 - Further assessment and review applications

Chapter 14 - Application by a party for further medical assessment (section 62(1)(a))

Applications (MAS forms 4A and 4R)

14.1 An application by either party for further assessment of a medical dispute referred to in section 62(1)(a), or a reply to an application by either party, must:

14.1.1 be in the form approved by the Authority; or

14.1.2 be in a form as directed by the Authority or Proper Officer; and

14.1.3 set out or be accompanied by the particulars and information required by that form or as otherwise directed by the Authority or Proper Officer.

14.2 An application for further assessment of a medical dispute may be lodged by either party but only after:

14.2.1 that dispute has previously been assessed by a MAS Assessor;

14.2.2 all certificates pertaining to that dispute have been issued {including combined certificates and Review Panel certificates};

14.2.3 the time period for lodging an application for either a correction of an obvious error or review, arising from the original assessment of that dispute has expired; and

14.2.4 any application for correction of an obvious error or for a review of the assessment of the dispute has been completed; and

in any case when the requirements of section 62(1) may be established.

Proper Officer determination

14.3 The Allocation Review of an application for further assessment is to be conducted in accordance with Chapter 9.

14.4 When conducting an Allocation Review of an application for further assessment pursuant to Chapter 9, the Proper Officer is to determine whether the application is suitable for referral for further assessment.

14.5 When determining whether a matter should be referred for further assessment under section 62 whilst conducting an Allocation Review, the Proper Officer shall have regard to:

14.5.1 the application and any reply;

14.5.2 any other applications and replies and/or MAS certificates on this medical dispute or any other medical disputes at MAS in relation to the same claimant, not limited to the same matter, after the parties have been provided with a copy of these documents; and

14.5.3 the objects of the Act and the objects of MAS.

14.6 If the Proper Officer is not satisfied that the deterioration of the injury or the additional information about the injury is such as to be capable of having a material effect on the outcome of the previous medical assessment, in accordance with subsections 62(1)(a) and (1A), the Proper Officer may not refer the matter again for assessment and may dismiss the application.

14.7 The Proper Officer is to provide the parties with brief written reasons for the decision at the same time as, or as part of the notification to the parties, of the outcome of the Allocation Review as required by clause 9.2.

Assessment of further applications

14.8 When the Proper Officer decides to refer a matter for further assessment, the Proper Officer shall determine how the application is to proceed in accordance with the provisions of Chapter 9 and, in particular, determine an appropriate MAS Assessor or Assessors to conduct the further medical assessment, also having regard to:

14.8.1 the application and any reply;

14.8.2 all injuries assessed by the original Assessor and any additional injuries listed in the application and reply;

14.8.3 the nature of the deterioration of the injury or the additional relevant information submitted by the parties;

14.8.4 the requirement that in permanent impairment disputes, impairment resulting from a physical injury is to be assessed separately from any impairment resulting from psychiatric or psychological injury; and

14.8.5 any other applications and replies and/or MAS certificates on this medical dispute or any other medical disputes at MAS in relation to the same claimant, not limited to the same matter, after the parties have been provided with a copy of these documents.

14.9 When the Proper Officer decides to refer a dispute for further assessment, the dispute may be referred to the original Assessor if available within a reasonable period and if, in the Proper Officer's view, it is appropriate in the circumstances, otherwise the dispute may be referred to a different Assessor.

14.10 An officer of MAS will provide the Assessor or Assessors with the information referred to in clause 9.11.5 as well as:

14.10.1 the written reasons for accepting the further assessment application under clause 14.8; and

14.10.2 any other applications and replies and/or MAS certificates on this medical dispute or any other medical disputes at MAS in relation to the same claimant, not limited to the same matter, after the parties have been advised of the details of these documents.

14.11 The further assessment will involve consideration of all aspects of the assessment afresh subject to this clause and clause 14.12 and may include:

14.11.1 assessment of all the injuries assessed by the original Assessor in any previous assessment of this dispute; and

14.11.2 any additional injuries listed on the application for further assessment and any reply.

14.12 In permanent impairment disputes, where the deterioration of the injury or the additional relevant information:

14.12.1 relates to physical injury, the further assessment will be limited to consideration of the physical injury; and

14.12.2 relates to psychiatric or psychological injury, the further assessment will be limited to consideration of the psychiatric or psychological injury.

Chapter 15 - Referral by a Claims Assessor or a Court (sections 60(1), 62(1)(b), 61(5))

Applications (MAS forms 6A and GR)

15.1 A Claims Assessor or a Court may refer a medical dispute for assessment under section 60(1).

15.2 A Claims Assessor or a Court may refer a medical dispute that has previously been assessed for further medical assessment under section 62(1)(b).

- 15.3 If the Court has rejected a certificate under section 61(4), it may refer a medical dispute that has previously been assessed for assessment again under section 61(5).
- 15.4 An application in relation to a referral under clauses 15.1, 15.2 or 15.3:
- 15.4.1 may be made directly by the Claims Assessor or Court, or by a party directed or requested to do so by the Claims Assessor or the Court; and
 - 15.4.2 must attach either:
 - 15.4.2.1 a copy of a signed request or direction by a Claims Assessor if available;
 - 15.4.2.2 a copy of a sealed order of the Court referring the medical dispute to MAS if available; or
 - 15.4.2.3 written confirmation from both parties attesting to the existence of, and terms of, the Court or Claims Assessor referral to MAS.
- 15.5 An application in relation to a referral under clauses 15.1, 15.2 or 15.3, or a reply to an application by either party, must:
- 15.5.1 be in the form approved by the Authority; or
 - 15.5.2 be in a form as directed by the Authority or Proper Officer; and
 - 15.5.3 set out or be accompanied by the particulars and information required by that form or as otherwise directed by the Authority or Proper Officer.
- 15.6 The provisions of Chapter 3 also apply to an application made under this chapter. If the application is made directly by the Claims Assessor or Court, then both parties are to be treated as being respondents to the application and both parties are to be given the opportunity to lodge a reply under clause 3.19.

Chapter 16 - Reviews of medical assessments (section 63)

Applications (MAS forms 5A and 5R)

- 16.1 Either party to a dispute may apply under section 63(1) for review of the assessment of a single MAS Assessor once the Assessor has issued a certificate:
- 16.1.1 under section 58(1)(a) or 58(1)(b) and in accordance with clause 13.3 regarding a treatment dispute, certifying whether or not treatments are reasonable and necessary, and/or certifying whether or not treatments relate to the injury caused by the accident;
 - 16.1.2 under section 58(1)(d) and in accordance with clause 13.5 regarding a permanent impairment dispute, certifying whether or not the degree of whole person permanent impairment is greater than 10%; and/or
 - 16.1.3 under section 58(1)(d) and in accordance with clause 13.7, regarding a permanent impairment dispute, certifying the degree of permanent impairment of the injured person as a result of the injuries assessed by that Assessor.

16.2 A combined certificate issued under section 61(10)(b) and clause 13.9 regarding a permanent impairment dispute, which combines the results of more than one assessment by a single MAS Assessor, cannot be the subject of a review application. A separate application is required to be made in respect of each separate assessment by a single MAS Assessor on which a review is sought.

16.3 An application for review of an assessment by a single MAS Assessor must be received:

16.3.1 in a treatment dispute, within 30 days after the date on which the certificate of the single MAS Assessor under clause 13.3 (or a replacement certificate under clause 17.11) was sent by MAS to the parties;

16.3.2 in a permanent impairment dispute assessed by a single MAS Assessor without a combined certificate required, within 30 days after the date on which the certificate of the single MAS Assessor under clause 13.5 (or a replacement certificate under clause 17.11) was sent by MAS to the parties; or

16.3.3 in a permanent impairment dispute assessed by more than one MAS Assessor with a combined certificate required, which will be based in part on the decision of the single MAS Assessor sought to be reviewed:

16.3.3.1 not before the combined certificate under clause 13.9 is sent by MAS to the parties (or a replacement combined certificate under clause 17.11);

16.3.3.2 within 30 days after the date on which that combined certificate (or replacement combined certificate) was sent by MAS to the parties.

Clauses 16.3.3.1 and 16.3.3.2 do not refer to a new combined certificate issued under clause 16.21.6 combining the result of a review of an assessment of a single MAS Assessor with the results of any other assessments included in that original combined certificate. If subsequent to a Review Panel determination a Review Panel or Assessor issues a new combined certificate, the issuing of that combined certificate does not start an additional period of time for lodging a review on any of the other original assessments by single MAS Assessors that were incorporated in that combined certificate.

16.4 An application for review lodged after the dates set out in clause 16.3 will not be considered, except as provided for in clause 16.5.

16.5 The Proper Officer may extend the time to lodge an application for review only if:

16.5.1 an application for review of that certificate has previously been made and dismissed by the Proper Officer and the Proper Officer has specified conditions under which the application may be lodged again in respect of the same assessment;

16.5.2 a respondent indicates in a reply to an application for review that in addition to the assessment under review it now seeks to have another assessment of the same claimant also reviewed; or

16.5.3 the Proper Officer is satisfied that exceptional circumstances exist that justify the lodgement of a late application, having regard to the submissions of the parties.

16.6 An application by either party for review of a medical assessment under section 63, or reply to an application by either party, must:

16.6.1 be in the form approved by the Authority; or

16.6.2 be in a form as directed by the Authority or Proper Officer; and

16.6.3 set out or be accompanied by the particulars and information required by that form or as otherwise directed by the Authority or Proper Officer.

16.7 If no reply is received within the time provided, the Proper Officer may consider the application in the absence of a reply.

16.8 In this chapter a reference to the 'original Assessor' is a reference to the single MAS Assessor whose assessment, referred to as the 'original assessment', is the subject of an application for review.

16.9 Chapter 3 'Referrals to the MAS registry' applies to applications for review, modified as necessary by the operation of clauses 16.1 to 16.8.

16.10 Chapter 12 'Documentation and other supporting material' applies to any documentation and material in support of an application for review or reply to such an application.

Proper Officer determination

16.11 The Proper Officer is to consider the application for review within 10 days of the due date for compliance with the requirements of clause 3.19.

16.12 If the Proper Officer is not satisfied that there is reasonable cause to suspect the assessment of the single MAS Assessor is incorrect in a material respect, the Proper Officer may dismiss the application.

16.13 The Proper Officer shall advise the parties as to whether the application is accepted and will be referred to a Review Panel or is dismissed, supported by a brief statement of reasons, within 5 days of considering the application.

Further information or documentation required

16.14 If the Proper Officer is satisfied that further information or documentation is required or is likely to assist in the review, the Proper Officer may:

16.14.1 request that additional information or documentation be provided by a party within a period of up to 20 days and notify the other party;

16.14.2 proceed with processing the application in the absence of the requested further information but only after the passing of any period of time specified for the submission of that additional documentation or information; or

16.14.3 admit into evidence any document despite non-compliance with any time limit in relation to that document or service of it.

Referral to a Review Panel

16.15 The Proper Officer will, within 5 days of advising the parties that the matter is to be referred to a Review Panel:

16.15.1 convene a Review Panel consisting of at least 3 MAS Assessors to undertake the review from the Authority's list of MAS Assessors, having regard to the nature of the injury and any

continuing disabilities, the nature of the dispute, the location of the claimant, the location of the Assessors, and any other relevant information; and

16.15.2 arrange for a Chairperson of the Review Panel to be appointed.

16.16 The Proper Officer or an officer of MAS is to advise the parties of the arrangements for the review within 5 days of the convening of the panel.

16.17 The Proper Officer or an officer of MAS shall act as secretary to the Review Panel and provide administrative support to the Review Panel, and shall arrange for copies to be sent to each member of the Review Panel of:

16.17.1 all the material that was before the original Assessor;

16.17.2 all certificates issued by the original Assessor;

16.17.3 the review application and reply, and any supporting submissions or documents;

16.17.4 any other applications and replies and/or MAS certificates in relation to the same claimant, not limited to the same matter, after the parties have been provided with copies of these documents;

16.17.5 the determination of the Proper Officer under clause 16.14 and

16.17.6 any additional information or documentation under clause 16.15.

16.18 Neither the Review Panel, nor individual Review Panel members, may delegate their functions to the Proper Officer.

Review Panel assessment

16.19 The Review Panel is to hold an initial meeting or teleconference within 30 days of the date the panel was convened and, at that meeting or in subsequent meetings, is to:

16.19.1 consider afresh all aspects of the assessment under review;

16.19.2 determine whether re-examination of the claimant is required, and if so set a timetable for that to occur;

16.19.3 determine whether additional information is required in order to make a decision;

16.19.4 determine whether each of the certificates issued by the original Assessor is to be confirmed or revoked;

16.19.5 if revoked, determine what new certificates are to be issued;

16.19.6 where the original assessment certificate was issued under clause 13.7 and included in a combined certificate under clause 13.9, determine whether the panel is to issue a new combined certificate, combining the result of the review with the results of the other assessments included in that combined certificate;

16.19.7 determine which member of the panel will sign any certificates on behalf of the panel;

16.19.8 determine whether a further meeting of the panel is required; and

16.19.9 advise the Proper Officer of any determinations under this clause.

16.20 In the case of clause 16.19.2 where there is to be a re-examination, clause 9.11.4 and clause 9.11.5, and Chapters 10, 11, 12 and 18 apply to the re-examination.

16.21 In the case of clause 16.19.9 the Proper Officer will advise the parties of any determinations made in a panel conference within 5 days of being advised of those determinations.

16.22 Within 20 days of the final meeting of the panel, and in any case within 60 days of the initial meeting, the panel shall issue its determination and any certificates, accompanied by written reasons for the determination, in the form approved by the Authority, to the secretary who shall within 5 days of the issuing of any certificates, provide them to the parties and the original Assessor.

16.23 If the Review Panel members are unable to agree on an aspect of the assessment, the determination of the majority of the Review Panel will be the determination of the Review Panel, or in the case of an evenly divided panel, the view supported by the Chairperson will be the determination of the Review Panel, and that determination will include a statement as to the opposing view.

16.24 The Review Panel is to act as expeditiously as practicable in the circumstances.

Division 5 - Corrections and costs

Chapter 17 - Corrections by Assessor

17.1 If a party to an assessment, or an Assessor considers that an Assessor or Review Panel has made an obvious error in a certificate, that party may make an application to the Proper Officer to have the error corrected by the MAS Assessor or review panel within 30 days after the date on which the certificate under either clause 13.3, 13.5, 13.9 or 16.23 was sent by MAS to the parties.

(Note: This period is different to the obvious error correction period at CARS, which is set at 21 calendar days after the CARS certificate of assessment was issued, which is timed to be consistent with the period for accepting a CARS assessment. Instead this MAS obvious error correction period is timed to be generally consistent with the period of time for lodging a MAS review as set out in Chapter 16 of these Guidelines.)

17.2 Any such application is to be made in writing to the Proper Officer, setting out details of the obvious error and the terms of the suggested correction.

17.3 The party making the application is to send a copy of the application to the other party.

17.4 Examples of obvious errors in the certificate include, but are not limited to:

17.4.1 a clerical or typographical error in the certificate;

17.4.2 an error arising from an accidental slip or omission;

17.4.3 a defect of form; or

17.4.4 an obvious inconsistency between the certificate and the reasons explaining the certificate.

17.5 The Proper Officer shall acknowledge the application by writing to both parties, and refer the matter to the Assessor or Review Panel.

Proper Officer referral to Assessor

17.6 The Proper Officer shall

17.6.1 write to the Assessor or Review Panel concerned referring the matter back to them for consideration; and

17.6.2 write to the parties advising them of the Proper Officer's referral.

Assessor's determination

17.7 In deciding whether or not there is an obvious error in the certificate the Assessor or Review Panel may seek submissions from the parties to the assessment.

17.8 In accordance with section 61(11), if the Assessor or Review Panel is satisfied that there is an obvious error in a certificate, the Assessor or Review Panel may issue a replacement certificate that corrects the obvious error that was sought to be corrected and that will replace the previous certificate.

17.9 If a replacement certificate is issued, the replacement certificate is to:

17.9.1 be titled as a 'replacement' certificate;

17.9.2 be dated the same day as the original certificate, and also identify the date the replacement certificate was issued; and

17.9.3 be taken to be the decision of the Assessor or Review Panel.

17.10 If the certificate is replaced, the Assessor or Review Panel must provide the Proper Officer with a copy of the replacement certificate within 10 days of receiving the Proper Officer's referral under clause 17.6.

17.11 If a replacement certificate is received, the Proper Officer must provide the parties with a copy of the replacement certificate within 5 days of receiving it.

Chapter 18 - Costs of assessment

18.1 The insurer must pay the reasonable expenses of the claimant and an accompanying person attending any medical or other examination arranged by MAS.

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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Catalogue no. SIRA09122 | ISBN 978-0-7347-4645-0 © State Insurance Regulatory Authority NSW 0121

Claims Assessment Guidelines

Version 6
Effective from
12 February 2021



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Publication Note

These Guidelines are published by the State Insurance Regulatory Authority (the Authority).

Part of the NSW Department of Customer Service, the Authority is constituted under the *State Insurance and Care Governance Act 2015* and is responsible for regulating workers compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation insurance in NSW.

These updated Guidelines support the establishment of the Personal Injury Commission on 1 March 2021. Savings and transitional provisions under the *Personal Injury Commission Act 2020* provide that pending proceedings and unexercised rights must be determined by applying the law as if the *Personal Injury Commission Act 2020* had not been enacted. Accordingly, these Guidelines are needed to determine those pending proceedings and unexercised rights. For all other matters from 1 March 2021, practice and procedure is governed by the Personal Injury Commission Rules and these Guidelines do not apply.

All references to 'Motor Accidents Authority' in earlier versions of this publication have been changed to the 'State Insurance Regulatory Authority' (the Authority).

Replacement and Transition

This new version of the Motor Accidents Claims Assessment Guidelines replaces in whole the previous version of the Motor Accidents Claims Assessment Guidelines dated 1 May 2014.

These Guidelines:

- apply to all claims and applications made before or after the commencement of these Guidelines; and
- do not invalidate a step previously taken under the Motor Accidents Claims Assessment Guidelines dated 1 May 2014.

Legislative Framework

The *Motor Accidents Compensation Act 1999* (the Act) establishes a scheme of CTP insurance and common law damages for people injured in motor accidents in New South Wales occurring between 5 October 1999 and 30 November 2017 inclusive. The objects of the Act, as described in section 5, are:

(a) to encourage early and appropriate treatment and rehabilitation to achieve optimum recovery from injuries sustained in motor accidents, and to provide appropriately for the future needs of those with ongoing disabilities,

(b) to provide compensation for compensable injuries sustained in motor accidents, and to encourage the early resolution of compensation claims,

(c) to promote competition in the setting of premiums for third-party policies, and to provide the Authority with a prudential role to ensure against market failure,

(d) to keep premiums affordable, recognising that third-party bodily insurance is compulsory for all owners of motor vehicles registered in New South Wales,

(e) to keep premiums affordable, in particular, by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities,

- (f) to ensure that insurers charge premiums that fully fund their anticipated liability,
- (g) to deter fraud in connection with compulsory third-party insurance.

The *Motor Accidents Compensation Regulation 2020* (the Regulation) contains provisions that support the implementation and operation of the Act.

Guideline Making Powers

These Guidelines are made under section 69(1) of the *Motor Accidents Compensation Act 1999* for or with respect to procedures for the assessment of claims under Part 4.4 of the Act and associated matters.

Interpretation of the Guidelines

These Guidelines should be read in conjunction with relevant provisions of the Act and the Regulation, and in a manner that supports the objects of the Act as described in section 5 of the Act.

Commencement of the Guidelines

The Guidelines come into effect on 12 February 2021 and apply to motor accidents occurring on or after 5 October 1999 and before 1 December 2017.

The Guidelines apply until the Authority amends, revokes or replaces them in whole or in part.

Purpose of the Guidelines

The Guidelines support delivery of the objects of the Act and the Regulation by establishing clear processes and procedures, scheme objectives and compliance requirements. In particular, the Guidelines describe and clarify expectations that apply to respective stakeholders in the scheme. The Authority expects stakeholders to comply with relevant parts of the Guidelines that apply to them.

Application of the Guidelines

The Guidelines explain the operation of those sections of the Act relating to the Claims Assessment and Resolution Service ('CARS'), a unit of the Authority. CARS was established to reduce the need for injured persons or insurers to commence legal or court proceedings.

The Guidelines apply to all new applications received at CARS on or after 12 February 2021 and all matters current at CARS on or after that date, that have not been determined, unless otherwise provided for in these Guidelines.

Compliance with the Guidelines

The Authority will monitor and review compliance with the Guidelines. Compliance and enforcement will be undertaken in accordance with the Authority's [Compliance and Enforcement Policy](#) (July 2017).

DIVISION 1 - INTRODUCTION AND REGISTRY

Chapter 1 - Introduction and interpretation

Introduction and commencement date

1.1 These Guidelines may be referred to as the 'Claims Assessment Guidelines' and are made pursuant to section 69(1) of the *Motor Accidents Compensation Act 1999* ('the Act'). They apply in respect of a motor accident occurring on or after 5 October 1999 and before 1 December 2017.

1.2 To avoid requirements that might be unreasonable in the circumstances on any person or entity, the Authority or the PCA may waive observance of any part or parts of these Guidelines for any application that has been lodged with the registry before these Guidelines apply.

1.3 The Authority or the PCA may dispense with the formal requirements of these Guidelines after advising the parties to the dispute and considering any submissions by the parties.

Definitions

1.4 The terms used in these guidelines have the following meanings:

1.4.1	Act	<i>Motor Accidents Compensation Act 1999</i>
1.4.2	Allocation Review	A consideration of an application for under and/or reply pursuant to Chapter 12.
1.4.3	Applicant	The party who initiates the referral of a claim or dispute in connection with a claim.
1.4.4	Application	The means by which a party requests the referral of a claim or dispute in connection with a claim for assessment or applies for a review.
1.4.5	Assessor	A Claims Assessor designated by the Authority under section 99. A reference to an Assessor in these Guidelines includes the PCA, unless otherwise stated.
1.4.6	Authority	State Insurance Regulatory Authority (SIRA)
1.4.7	CARS	Motor Accidents Claims Assessment and Resolution Service of the Authority.
1.4.8	Claimant	A person who makes or is entitled to make a claim under the Act.

1.4.9	Claims Assessor	A person appointed by the Authority under section 99 of the <i>Motor Accidents Compensation Act 1999</i> as a Claims Assessor.
1.4.10	CTP	Compulsory Third Party
1.4.11	CTP Assist	An advisory service of the Authority to assist claimants in connection with claims for statutory benefits and claims for damages, and with dispute resolution
1.4.12	Determination Review	A consideration of an application for exemption from assessment and/or reply under Chapter 8.
1.4.13	EDM system	An electronic dispute management system established by the Authority.
1.4.14	ET Act	<i>Electronic Transactions Act 2000</i> , as amended from time to time.
1.4.15	Form	A form approved by the Authority that may contain an application and/or a reply to an application.
1.4.16	Injured person	A person who has suffered an injury that is the subject of a claim made under the Act.
1.4.17	Insurer	Any party against whom a claim is made under the Act.
1.4.18	Licensed insurer	An insurer that is the holder of a license granted under Part 7.1 of the Act and in force.
1.4.19	MAS	Motor Accidents Medical Assessment Service of the Authority.
1.4.20	MAS Assessor	A Medical Assessor appointed by the Authority under section 59.
1.4.21	Matter	The application, reply and all supporting documents and correspondence held by CARS in relation to one application in relation to the assessment of a claim or a dispute in connection with a claim. Each matter lodged at CARS is given a unique matter number.
1.4.22	Officer of CARS	An officer of the Authority undertaking work in CARS as directed by, or as delegated by the PCA.
1.4.23	PCA	Principal Claims Assessor of the Authority appointed by the Minister under section 99A.
1.4.24	Person under legal incapacity	includes: (a) a child under the age of 18 years;

		(b) a temporary patient, continued treatment patient or forensic patient within the meaning of the <i>Mental Health Act 2007</i> ; (c) a person under guardianship within the meaning of the <i>Guardianship Act 1987</i> ; (d) a protected person within the meaning of the <i>NSW Trustee and Guardian Act 2009</i> ; and (e) an incommunicate person, being a person who has such a physical or mental disability that he or she is unable to receive communications, or express his or her will, with respect to his or her property or affairs.
1.4.25	Registry	That part of the Authority that receives documents for the purpose of assessment of claims or disputes in relation to claims, or exemption of claims from assessment.
1.4.26	Regulation	<i>Motor Accidents Compensation Regulation 2020</i>
1.4.27	Reply	The form by which a respondent answers an application.
1.4.28	Respondent	A party who is required to respond to an application.

1.5 A reference in these Guidelines to a section 'X' is a reference to a section of the *Motor Accidents Compensation Act 1999*.

1.6 A reference to a party in these Guidelines includes the plural.

1.7 A reference in these Guidelines to a number of days is a reference to a number of working days, unless otherwise stated.

1.8 A reference in these Guidelines to a service copy of material is a reference to a separate (duplicate) set of the documents that are attached to and lodged with, or in support of, an application or reply.

1.9 The Authority will provide and maintain CTP Assist to assist claimants in connection with the claims assessment procedures under the Act.

Objects of CARS

1.10 The objects of CARS set out in clause 1.11 should be used as an aid to the interpretation of these Guidelines.

1.11 The objects of CARS in dealing with claims and disputes in connection with claims referred are:

1.11.1 to provide a timely, fair and cost-effective system for the assessment of claims under the *Motor Accidents Compensation Act 1999* that is accessible, transparent, independent and professional;

1.11.2 to assess claims and disputes fairly and according to the substantial merits of the application with as little formality and technicality as is practicable and minimising the cost to the parties;

1.11.3 to ensure the quality and consistency of CARS decision making;

1.11.4 to make appropriate use of the knowledge and experience of Claims Assessors; and

1.11.5 to establish and maintain effective communication and liaison with stakeholders concerning the role of CARS.

1.12 The objects of CARS set out in clause 1.11 are consistent with, and are in support of, the objects of the Act set out in section 5(1) and the 'Acknowledgements of the Act' set out in section 5(2).

1.13 In exercising their functions and interpreting the provisions of these Guidelines, the Authority, the PCA, Claims Assessors and officers of CARS must have regard to the objects of CARS, in addition to the objects of the Act.

(**Note:** At the time of publication of these Guidelines, some of the Objects and Acknowledgements in those specific sections of the Act referred to above most relevant to these Guidelines include:

Objects

Section 5(1)(a) - to encourage early and appropriate treatment and rehabilitation to achieve optimum recovery from injuries sustained in motor accidents, and to provide appropriately for the future needs of those with ongoing disabilities; and

Section 5(1)(b) - to provide compensation for compensable injuries sustained in motor accidents, and to encourage the early resolution of compensation claims; and

Section 5(1)(e) - to keep premiums affordable, in particular, by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities.

Acknowledgements

Section 5(2)(a) - that participants in the scheme under this Act have shared and integrated roles with the overall aim of benefiting all members of the motoring public by keeping the overall costs of the scheme within reasonable bounds so as to keep premiums affordable; and

Section 5(2)(b) - that the law (both the enacted law and the common law) relating to the assessment of damages in claims made under this Act should be interpreted and applied in a way that acknowledges the clear legislative intention to restrict the level of non-economic loss compensation in cases of minor injuries; and

Section 5(2)(c)(i) - that the premium pool from which each insurer pays claims consists at any given time of a finite amount of money; and

Section 5(2)(c)(iii) - that the preparation of fully funded premiums requires a large measure of stability and predictability regarding the likely future number and cost of claims arising under policies sold once the premium is in place; and

Section 5(2)(c)(iv) - that the stability and predictability referred to in subparagraph (iii) require consistent and stable application of the law.)

Chapter 2 - Jurisdiction

- 2.1 An application may be made to CARS for assessment of:
- 2.1.1 whether a certificate of exemption should be issued under section 92(1)(a) ('an application for exemption');
 - 2.1.2 the insurer's liability for the claim and the amount of damages for that liability and the issue of a certificate under section 94, and/or whether a certificate of exemption should be issued under section 92(1)(b) if the claim is found to be 'not suitable for assessment' ('an application for general assessment');
 - 2.1.3 a matter remitted by the Court for further claims assessment and issue of a new certificate of assessment where significant new evidence is produced in court proceedings under section 111 ('an application for further general assessment'); and/or
 - 2.1.4 a dispute in connection with a claim between a claimant and an insurer that is one of the certain types of disputes as set out in section 96 ('an application for special assessment').
- 2.2 An officer of CARS may reject an application or any part thereof as not duly made if the officer is satisfied that the application or part thereof does not establish that it relates to one of the above types of assessments, and in the case of clause 2.1.4, that it does not relate to one of the types of disputes set out in section 96.
- 2.3 An officer of CARS may reject an application made on behalf of, or in respect of, a personal injury claim made by a person who has died after the claim has been made, unless it is accompanied by a grant of probate or letters of administration or equivalent, and confirmation that the estate seeks to pursue the claim.

Chapter 3 - Referrals to the CARS registry

- 3.1 The Authority shall establish and maintain a registry for the referral of applications.
- 3.1.1 The CARS office is located at 1 Oxford Street, Darlinghurst, Sydney, and is open to the public for lodgement of documents and general enquiries from 8:30am to 5:00pm except on Saturdays, Sundays and public holidays. The registry may be kept open to the public for business or closed for business at such times and on such days as the Authority may direct.
 - 3.1.2 CARS may make provision for lodgement of documents electronically and also outside the usual opening hours. Any documents lodged electronically after 11:59pm will be deemed to have been received on the next day that CARS is open to the public for lodgement of documents in person.
- 3.2 A claimant may lodge an application with CARS by:
- 3.2.1 **application form** – by completing the approved CARS application form, and lodging it with CARS by post, email, or in person;
 - 3.2.2 **online application process** – by completing an approved online CARS application process through the EDM system or;

3.2.3 **telephone** – a claimant who is making an application may contact CARS by telephone to make an application, which CARS will confirm in writing to the parties, confirming the nature and extent of the application.

3.3 CARS will, as soon as practicable, and preferably within two working days, acknowledge receipt of the application, and will give notice of the application to the other party, providing them with access to the application and all supporting documents and materials.

3.4 An insurer or their representative may only lodge an application with CARS by completing an approved online CARS application through the EDM. If the EDM system is unavailable at the time of lodgement, the insurer may complete a CARS application form and lodge it with CARS by post, email or in person.

The contact details for CARS are:

Phone: 1800 34 77 88

Address: Level 19, 1 Oxford St, Darlinghurst, NSW 2010

Email: drsenquiries@sira.nsw.gov.au

3.5 The Authority shall arrange for all applications made under these Guidelines to be allocated a matter number and registered. All subsequent correspondence concerning the application is to quote that matter number.

3.6 All correspondence to, and communication with, an Assessor in relation to a claims assessment, either in respect of a current or concluded assessment, must, unless the Authority, PCA or the Assessor directs otherwise, be directed to the Assessor care of the registry.

3.7 If a legal practitioner or agent represents the claimant in respect of the assessment of the matter:

3.7.1 it is sufficient notification for the Authority, PCA, an Assessor, an officer of CARS or an insurer to send any document required to be sent to the claimant, to the legal practitioner or agent; and

3.7.2 the Authority, PCA, an Assessor or an officer of CARS may, notwithstanding that the claimant has legal or other representation, contact the claimant directly in relation to the assessment of the claim.

3.8 If a legal practitioner or agent represents the insurer in respect of the assessment of the claim:

3.8.1 it is sufficient notification for the Authority, PCA, an officer of CARS or a claimant to send any document required to be sent to the insurer to the legal practitioner or agent; and

3.8.2 the Authority, PCA or an officer of CARS may, notwithstanding that the insurer has legal or other representation, contact the insurer directly in relation to the assessment of the claim.

3.9 If a party, represented by a legal practitioner or agent, requests CARS to do so, the Authority, PCA, an Assessor, or an officer of CARS may at their discretion send a copy of any document required to be sent to that party, to the party direct, in addition to that party's legal representative or agent.

3.10 If after an application or reply is lodged at CARS, a party retains a legal practitioner or agent to represent them, or changes their legal practitioner or agent, that party must notify the Authority and the other party in writing within 5 days of the date of the retainer or change in representation.

3.11 If after an application lodged at CARS has been allocated to an Assessor, a party retains a legal practitioner or agent to represent them, or changes their legal practitioner or agent, that party must notify

the Authority, the other party and the Claims Assessor to whom the matter has been allocated in writing within 5 days of the date of the retainer or change in representation.

What must an application include?

3.12 An application to CARS must include:

3.12.1 all requirements specified in any approved application form

3.12.2 all requirements specified in any approved online application process through any EDM system, or

3.12.3 all information requested by an officer of CARS while a telephone application is being made.

3.13 A claimant who is making an application should list all documents relevant to their application, but they do not need to attach copies of documents or materials they have previously provided to the insurer and on which they seek to rely. The claimant only needs to provide copies of new documents or materials in support of the application.

3.14 The insurer is required to provide to CARS all of the documents or materials in their possession relevant to the proceedings including documents and materials listed in the application by the claimant that the claimant has previously supplied to the insurer. When providing the documents through the EDM, the insurer must upload the documents individually and categorise them, by selecting the most relevant category for each document. Failure to categorise documents lodged by an insurer, may result in an application being rejected.

3.15 CARS may decline to accept an application if the application does not comply with the above, and may notify the parties as soon as practicable, providing brief reasons for its decision.

Can an applicant withdraw or amend an application?

3.16 An applicant may withdraw or amend an application to CARS online, by letter, telephone, email, or in person at any time before CARS notifies the parties of the outcome. CARS will confirm the withdrawal or amendment of the application in writing to the parties.

How is a reply lodged?

3.17 A reply should be lodged as soon as practicable by a respondent and within any time limits specified in the Act, the Regulation or these Guidelines.

3.18 A claimant may lodge a reply to an application with CARS by:

3.18.1 **reply form** – by completing the approved CARS reply form, and lodging it with CARS by post, email, or in person

3.18.2 **online reply process** – by completing an approved online CARS reply process through any EDM system, or

3.18.3 **telephone** – by contacting CARS by telephone, which CARS will confirm in writing to the parties, confirming the nature and extent of the claimant's reply.

3.19 An insurer or their representative may lodge a reply with CARS by completing an approved online CARS application through the EDM. If the EDM system is unavailable at the time of lodgement, the insurer can complete a CARS application form and lodge it with CARS by post, email or in person.

3.20 As soon as practicable, and preferably within two working days of receiving the reply, CARS will acknowledge receipt of the reply to the respondent, and will give notice of the reply to the applicant, providing them with access to the reply and all supporting documents and materials.

What must a reply to an application include?

3.21 A reply to an application must include:

3.21.1 all requirements specified in any approved reply form for responding to an application

3.21.2 all requirements specified in any approved online reply process through any EDM system for responding to an application.

3.22 A claimant who is lodging a reply should list all documents relevant to their reply, but they do not need to attach copies of documents or materials they have previously provided to the insurer. The claimant only needs to provide copies of documents or materials not previously provided.

3.23 The insurer must provide to CARS all of the documents or materials in their possession relevant to the application and reply, including documents and materials listed in the reply that the claimant has previously supplied to the insurer. When providing the documents through the EDM, the insurer must upload the documents individually and categorise them, by selecting the most relevant category for each document. Failure to categorise documents may result in the reply being rejected

3.24 CARS may decline to accept a reply if the reply does not comply with clause 3.21 (above).

3.25 CARS may proceed to hear and determine an application in the absence of a reply.

Expedited applications

3.26 Either party to a dispute may apply at any time for a matter to be expedited by doing so in writing to CARS, and giving notice to the other party setting out full details of the basis on which expedition of the application is sought.

3.27 In considering whether they are satisfied that an application for expedition should be granted, the PCA shall consider all relevant factors and circumstances surrounding the matter including, but not limited to:

3.27.1 the objects of the Act;

3.27.2 the objects of CARS;

3.27.3 the interests of both parties to the matter; and

3.27.4 the interests of other parties to other disputes, particularly regarding the equity of prioritising the matter seeking expedition ahead of other matters.

3.28 If the PCA is satisfied that the matter warrants being expedited, having considered any submissions from the parties, the PCA will take all reasonable steps to ensure the matter is dealt with by CARS as quickly as possible.

3.29 The types of exceptional circumstances that may warrant an application for expedition being accepted may include, but are not limited to, issues such as:

3.29.1 claimants with seriously deteriorating health requiring an urgent assessment;

3.29.2 claimants who are only able to remain in the country for a limited period of time due to matters outside their control; and/or

3.29.3 claimants with matters currently being heard before a Court or CARS.

Chapter 4 - Interpreters

4.1 If a party indicates that an interpreter is required, an officer of CARS will arrange for an interpreter to be present at any assessments.

4.2 Interpreters accredited by National Accreditation Authority for Translators and Interpreters (NAATI) should be used during the course of a claims assessment if an interpreter is required.

4.3 In the absence of a NAATI interpreter, a non-NAATI interpreter may be used at the discretion of the Assessor, the Authority or PCA.

Chapter 5 - Time

Abridgement or extension of time

5.1 The Authority or PCA or an Assessor may, if the circumstances justify, and on terms, abridge or extend any time limit fixed by these Guidelines, including any time limit affecting the Authority, PCA, CAO, an officer of CARS, or an Assessor, other than the time fixed in clause 18.3.

5.2 The Authority or PCA or an Assessor may extend time under clause 5.1 after the time expires, whether or not an application is made before the time expires, or at all.

Reckoning of time

5.3 Any period of time fixed by these Guidelines for the doing of any act or in connection with any assessment or direction by the Authority, PCA, CAO or an Assessor shall be reckoned in accordance with clauses 5.4, 5.5 and 5.6.

5.4 Where a time of 1 day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.

5.5 Where, apart from this sub-clause, the period in question, being a period of 5 days or less, would include a day on which the registry is closed for lodgement in person, that day shall be excluded.

5.6 Where the last day for doing a thing is a day on which the registry is closed for lodgement in person, the thing may be done on the next day on which the registry is open for lodgement in person.

Chapter 6 - Delivery of documents

6.1 For matters lodged other than via the EDM system, for the purpose of these Guidelines, where a claimant or insurer in any document lodged notifies an address for delivery or receipt of documents, then leaving a document at that address, or sending a document to that address, shall be taken to be received by the person as follows:

6.1.1 in the case of a physical address, on the day the document is left at that address;

6.1.2 in the case of a physical or postal address, on a day 5 days after the document is sent;

6.1.3 in the case of an email address, on the day the email or email attachment is sent if sent before 5:00pm, or on the day after the email or email attachment is sent if sent at or after 5:00pm;
or

6.1.4 in the case of a facsimile number, on the day the facsimile is sent if sent before 5:00pm, or on the day after the facsimile is sent if sent at or after 5:00pm.

Chapter 7 - Electronic dispute management system

Establishment of an EDM system

7.1 The Authority may establish an EDM system to help support the objects of CARS, including to:

7.1.1 enable applications and replies to CARS to be created, lodged, exchanged and accessed in an electronic form;

7.1.2 enable documents with respect to applications to CARS to be created, exchanged, lodged, issued and accessed in electronic form by the parties and CARS;

7.1.3 enable parties to applications to CARS to communicate in an electronic form with CARS and with other parties;

7.1.4 enable information concerning the progress of applications to CARS to be provided in an electronic form to parties to those disputes; and/or

7.1.5 enable officers of CARS and decision-makers to communicate in an electronic form with parties to applications to CARS.

7.2 CARS may issue an information sheet for the use of the EDM system, and establish requirements for persons to become registered users of the EDM system, in addition to decision-makers and officers of CARS.

7.3 Such an information sheet may specify, among other things, the level of access to the EDM system to which persons or specified classes of persons are entitled, the conditions of use of the EDM system applicable to persons generally or persons of any such class, the security methods by which persons using the EDM system are identified and verified, and how users gain access to the EDM system.

7.4 Subject to any information sheet, a person other than a claims assessor and an officer of CARS may not access the EDM system for a particular application unless they are a registered user of the EDM system and is:

7.4.1 a party to the application to CARS, or

7.4.2 a legal practitioner or agent representing a party to the application to CARS.

7.5 In relation to any application, the level of access to the EDM system to which a user is entitled, and the conditions of use applicable to a user, are subject to any decision of CARS.

7.6 Documents and information lodged via the EDM system may be dealt with in accordance with the provisions of the *Electronic Transactions Act 2000* (NSW).

7.7 When CARS sends documents or forwards correspondence to a party who is a registered user of the EDM system, it will generally only do so via electronic communication to that party through the EDM system.

DIVISION 2 - APPLICATION TYPES

Chapter 8 - Exemption of claims from general assessment (section 92(1)(a))

Applications (CARS forms 1A and 1R)

8.1 An application or reply by either party for a certificate of exemption under this chapter must:

8.1.1 be in the form approved by the Authority; or

8.1.2 be in a form as directed by the Authority, PCA or a Claims Assessor; and

8.1.3 set out or be accompanied by the particulars and information required by that form or as otherwise directed by the Authority or PCA.

8.2 The claimant, the insurer, or both may make an application to the PCA for a certificate of exemption under section 92(1)(a) pursuant to this chapter. (Note: For provisions regarding making an application to an Assessor that a claim is not suitable for assessment and is exempt under section 92(1)(b) see Chapter 14 at clause 14.11 and following.)

8.3 A separate application is required for each claim that a party seeks to have exempted.

Time limits for referring claims for exemption

Claims made before 1 October 2008

8.4 For claims made before 1 October 2008 an application for exemption under this chapter may be made at any time, subject to the time limits prescribed in section 91.

Claims made on or after 1 October 2008

8.5 For claims made after 1 October 2008 an application for exemption under this chapter may be made at any time in accordance with section 91(2)(c).

Determination Review

8.6 When an application for exemption is made under this chapter, the PCA is to arrange for the Determination Review of the matter to consider:

8.6.1 the eligibility of the matter for determination in accordance with Chapter 2;

8.6.2 whether the application and/or reply are properly made in accordance with Chapter 3;

8.6.3 whether further information or documentation is required; and/or

8.6.4 whether the claim is exempt from assessment.

8.7 The PCA is to ensure that a Determination Review of the matter is undertaken within 5 days of the due date for a reply under clause 3.17 or within 5 days of the acknowledgement of the reply under clause 3.20, whichever is the later.

8.8 If a claim is to be exempted under section 92(1)(a), the PCA or Claims Assessor on behalf of the PCA, must issue a certificate of exemption within 5 days of the Determination Review date.

8.9 If a claim is not to be exempted under section 92(1)(a), the PCA or Claims Assessor on behalf of the PCA, must advise the parties of the outcome of the Determination Review within 5 days of the Determination Review date.

8.10 If no reply is received within the time period referred to in clause 3.17, the PCA may determine the matter in the absence of a reply.

8.11 For the purpose of section 92(1)(a), the PCA shall issue a certificate of exemption when, as at the time of the consideration of the application, and after a preliminary assessment of the claim, the PCA is satisfied that the claim involves one or more of the following circumstances:

8.11.1 liability is expressly denied by the insurer, in writing, but only in circumstances where liability is denied because the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle is denied; (Note: Only denials of liability where fault is denied will satisfy this requirement. Denials of liability for any other reasons, but where the fault of the owner or driver of a motor vehicle in the use or operation of the vehicle is not denied, will not satisfy this requirement.)

8.11.2 the claimant, or in a claim for an award of damages brought under the *Compensation to Relatives Act 1897* one of the dependents, is a 'person under a legal incapacity'; (Note: See definition in Chapter 1 at clause 1.4.24)

8.11.3 the person against whom the claim is made is not a licensed or other CTP insurer;

8.11.4 the insurer has notified the claimant, and the owner or driver of the motor vehicle against which the claim has been made under the third-party policy provided for in section 10 of the Act, in writing, that it declines to indemnify that owner or driver; and/or

8.11.5 the insurer alleges that the claim is a fraudulent claim in terms of the circumstances of the accident giving rise to the claim.

(Note: For example where it is alleged that the accident may have been staged or where a person claiming to have been a passenger in the vehicle is alleged to have been the driver of the vehicle.)

Dismissal of exemption application

8.12 The PCA may dismiss an application for exemption made under section 92(1)(a) and clause 8.1 if the PCA is satisfied that:

8.12.1 the claim may not be exempted in accordance with section 92(1)(a) and clause 8.11 of these Guidelines;

8.12.2 the applicant has withdrawn the application;

8.12.3 the claimant is not pursuing or prosecuting the application or the claim; or

8.12.4 the section 91(1) time limits referred to in clauses 8.4 and 8.5 have not been satisfied (if relevant) or the application is otherwise invalid.

Chapter 9 - General assessment (section 94)

Applications (CARS forms 2A and 2R)

9.1 An application or reply to an application by either party for general assessment must:

9.1.1 be in the form approved by the Authority;

9.1.2 be in a form as directed by the Authority, PCA or a Claims Assessor; and

9.1.3 set out or be accompanied by the particulars and information required by that form.

9.2 Either party may lodge an application for general assessment at any time, subject to the time limits for referring claims in section 91 and this chapter.

9.3 An application for general assessment cannot be lodged unless:

9.3.1 there is an agreement between the parties as to whether or not the claimant is entitled to compensation for non-economic loss;

9.3.2 a MAS Assessor has issued a certificate under section 61(2)(a) and clause 13.5 or clause 13.9 of the Medical Assessment Guidelines determining a medical dispute under section 58(1)(d), by

certifying whether the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%;

9.3.3 a MAS Assessor has declined to make an assessment under section 132(3) of a medical dispute under section 58(1)(d) about whether the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%, and that assessment has not yet been completed as the Assessor is not satisfied that impairment caused by the injury has become permanent; or

9.3.4 at least 3 calendar months have elapsed since an application was lodged with MAS under section 60(1) and Chapter 8 of the Medical Assessment Guidelines for assessment of a medical dispute under section 58(1)(d) and a certificate in accordance with clause 13.5 or clause 13.9 of the Medical Assessment Guidelines, certifying whether the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%, has not yet been sent to the parties.

(Note: The exclusion in clause 9.3.4 will enable an application for general assessment to be lodged at CARS if the initial application to MAS for assessment of impairment was lodged more than 3 months ago and that assessment has not been completed.

In order to be able to lodge a CARS general assessment application within 3 years of an accident, an application to MAS for assessment of impairment needs to be lodged at least 3 months beforehand, by 2 years and 9 months after the accident.

In the vast majority of claims the degree of impairment is able to be accurately assessed by a MAS Assessor at 12-18 months post-accident. It is recommended that applications for assessment of impairment should be lodged at MAS by 18 months post-accident at the latest.)

Chapter 10 - Further general assessment (section 111)

Applications (CARS forms 3A and 3R)

10.1 Where a Court has adjourned proceedings until a party who has adduced significant new evidence has referred a matter for further general assessment, the application or reply to an application for a further assessment must:

10.1.1 be in the form approved by the Authority;

10.1.2 be in a form as directed by the Authority, PCA or a Claims Assessor; and

10.1.3 set out or be accompanied by the particulars and information required by that form.

10.2 The provisions of Chapter 3 'Referrals to the CARS registry' also apply to an application made under this chapter.

10.3 The provisions of Chapter 12 'Allocation' in clauses 12.1 to 12.2, and 12.4 to 12.7, do not apply to applications made under this chapter. Instead, the PCA or an officer of CARS is, within 5 days of the due date for a reply to an application as set out in clause 3.17, to allocate the matter to the original Assessor, if available, or to a different Assessor, in accordance with the remainder of Chapter 12.

Chapter 11 - Special assessment (section 96)

Applications (CARS forms 5A and 5R)

- 11.1 An application or reply to an application for a special assessment must:
- 11.1.1 be in the form approved by the Authority;
 - 11.1.2 be in a form as directed by the Authority, PCA or a Claims Assessor; and
 - 11.1.3 set out or be accompanied by the particulars and information required by that form.
- 11.2 Either party may lodge an application for special assessment at any time.

Disputes about interim payments in cases of financial hardship

- 11.3 An application for a special assessment under section 96(1)(f) about whether a payment is required to be made under section 84A shall, at the time it is acknowledged in accordance with clause 3.20, be referred immediately to the PCA for allocation in accordance with Chapter 12.

DIVISION 3 - ALLOCATIONS AND ASSESSMENTS

Chapter 12 - Allocation

Allocation Review

- 12.1 When an application is made under Chapters 9, 10, or 11, the PCA is to arrange for the Allocation Review of the matter to determine:
- 12.1.1 the eligibility of the matter for assessment in accordance with Chapter 2;
 - 12.1.2 whether the application and/or reply are properly made in accordance with Chapter 3;
 - 12.1.3 whether further information or documentation is required (see clause 12.5);
 - 12.1.4 whether the matter is ready for assessment or whether the assessment should be deferred (see clause 12.6);
 - 12.1.5 whether the application should be dismissed (see Chapter 13); and
 - 12.1.6 the way in which a matter is to be allocated for assessment (see clause 12.10).
- 12.2 The PCA is to ensure that an Allocation Review of the matter is undertaken:
- 12.2.1 in the case of an application for a special assessment under section 96(1)(f) about whether a payment is required to be made under section 84A within 5 days of receipt of the application in the registry; or
 - 12.2.2 for all other applications - within 10 days of the due date for a reply under clause 3.17.

12.3 The parties are to be advised of the outcome of the Allocation Review within 5 days.

12.4 If no reply is received within the time provided referred to in clause 3.17, the PCA may conduct an Allocation Review in the absence of a reply.

Further information or documentation required

12.5 In the case of clause 12.1.3, if the PCA is satisfied that further information or documentation is required or is likely to assist in the resolution of the matter the PCA may:

12.5.1 after conducting a preliminary assessment of the matter, direct under section 100 that further information or documentation be provided, and notify the other party; and

12.5.2 proceed with processing the application in the absence of the requested further information or documentation.

Defer allocation

12.6 In the case of clause 12.1.4, the PCA may defer the allocation of the matter for a period of time that the PCA considers appropriate in the circumstances, and not exceeding 12 months at a time, in circumstances where the PCA is satisfied that:

12.6.1 further information or documentation has been requested (see clause 12.5);

12.6.2 there are other claims or issues in dispute or likely to be in dispute which would more conveniently be determined at the same time;

12.6.3 there has not been a genuine attempt by one or both parties to settle the matter or claim and it may be capable of resolution (see clause 12.7);

12.6.4 the issues in dispute involve medical disputes that require a MAS assessment and that MAS assessment has not occurred (see clause 12.8);

12.6.5 the claimant's injury has not sufficiently recovered to enable the claim to be quantified having regard to any medical evidence attached to the application or reply; or

12.6.6 there are other good reasons to defer the allocation of the claim; and if the application is to be deferred for more than 3 months the parties shall be given the opportunity to make a submission on that proposed deferral.

12.7 In the case of clause 12.6.3, if the PCA is satisfied that the matter or claim is capable of resolution by the parties, the PCA may defer allocating the matter to an Assessor for a period not exceeding 2 months to allow the parties an opportunity to settle the claim. Either party can apply to the PCA to proceed with the assessment at any time if settlement negotiations fail.

12.8 In the case of clause 12.6.4, if the PCA is satisfied that the matter requires a MAS assessment and a MAS assessment has not occurred the PCA may:

12.8.1 dismiss the application; or

12.8.2 defer allocating the application; and:

12.8.2.1 request that one of the parties to the assessment make a MAS application for medical assessment under section 60(1) or section 62(1)(a); or

12.8.2.2 refer the claim to MAS for medical assessment under section 60(1) or section 62(1)(b).

12.9 If the allocation of a matter is deferred in total for more than 6 months, it will be marked as a 'long deferral' matter and the PCA or an officer of CARS may from time to time conduct fresh Allocation Reviews of the matter as needed, seeking submissions from the parties, to assess the readiness of the matter for allocation and to consider whether or not the matter would more appropriately be dismissed in accordance with Chapter 13, rather than continuing to be deferred.

Allocation for assessment

12.10 When a matter is considered ready to be allocated for assessment, under section 93 the PCA is responsible for making arrangements as to the Claims Assessor who is to assess any particular claim or class of claims that are not exempt from assessment. The PCA shall determine the way in which a matter is to be allocated for assessment and shall:

12.10.1 refer the matter to a Claims Assessor from the Authority's list of Claims Assessors having regard to the nature of the matter, the availability of the Assessor, the experience of the Assessor, the location most convenient to the parties and CARS for the assessment to take place, and any other relevant information;

12.10.2 make the arrangements for a preliminary assessment and Preliminary Conference with the Assessor to whom the matter has been allocated;

12.10.3 notify the parties of the name of the Assessor allocated and the time and date for the Preliminary Conference; and

12.10.4 notify the Assessor of the allocation and provide the Assessor with the application, reply and all documents and material in support of the application and reply.

12.11 A party may, within 10 days of the date of sending of notification of the name of the Assessor, apply to the PCA to have the matter re-allocated to a different Assessor. Such an application must be made in writing and be accompanied by a detailed statement of facts and/or reasons as to why the Assessor might no longer be an appropriate Assessor to assess the matter and a copy must be provided to all other parties to the matter.

12.12 The PCA shall within 5 days of receiving an application under clause 12.11 make a decision on such an application, and may re-allocate the matter if satisfied that there are reasonable grounds for believing that the Assessor might no longer be an appropriate Assessor to assess the matter.

12.13 The PCA may reallocate a matter to a different Assessor for assessment if the original Assessor becomes unwell, is otherwise unable to assess the matter, or is no longer an appropriate Assessor to assess the matter.

Chapter 13 - Dismissal

13.1 The PCA or an Assessor may at any stage dismiss a dispute regarding a general or special assessment in circumstances where they are satisfied that:

13.1.1 the applicant has withdrawn the application;

13.1.2 the application is not likely to be ready to be assessed within the next 12 months;

13.1.3 the applicant fails without reasonable excuse to comply with the PCA or Assessor's directions;

13.1.4 it appears that the claimant is not pursuing or prosecuting the application or the claim;

13.1.5 the application is frivolous, vexatious, misconceived or lacking in substance;

13.1.6 the application is being used for an improper purpose or is otherwise an abuse of process; or

13.1.7 the application is made by a person who has died after the application was referred to CARS, unless a copy of the grant of probate or letters of administration or equivalent are provided, and the PCA or Assessor is satisfied that the estate seeks to pursue the CTP claim or the application.

13.2 A matter may be dismissed on the application of a party, or of the PCA or Assessor's own initiative, by the PCA or Assessor, after having given all parties the opportunity to make submissions about the proposed dismissal of the matter.

Chapter 14 - Preliminary assessment and Preliminary Conference

14.1 The preliminary assessment arranged in accordance with clause 12.10.2 is to be conducted within 15 days of the date the parties are advised of the allocation (or re-allocation in accordance with clause 12.12 or 12.13) of a matter to an Assessor.

14.2 On the preliminary assessment, the Assessor is to review the matter to:

14.2.1 determine, pursuant to section 92(1)(b) whether the claim is suitable for assessment (see clause 14.11);

14.2.2 determine whether other documentation or information is required as set out in clauses 14.8.2 and 17.8;

14.2.3 determine the way in which an assessment is to proceed as set out in clauses 14.8.1 and 16.8; and

14.2.4 conduct the Preliminary Conference.

14.3 The Assessor may conduct one or more further Preliminary Conferences.

14.4 If at any stage after being allocated a matter to assess, the Assessor considers that they are no longer suitable to assess the claim, the Assessor may disqualify themselves from assessing the claim by advising the PCA and the parties, setting out the facts and/or reasons why the Assessor considers they might be unable to assess the claim. The PCA shall within 5 days of receiving such advice from an Assessor re-allocate the matter to another Assessor.

14.5 A Preliminary Conference may be conducted by way of:

14.5.1 a teleconference; or

14.5.2 a face to face conference; between the Assessor, the claimant (and/or the claimant's legal representative or agent) and any parent, spouse, legal guardian, carer or other support person of the claimant, the insurer (and/or the insurer's legal representative or agent), and any interpreters or witnesses, or other persons the Assessor requires or allows to appear, and otherwise the Preliminary Conference is not to be open to the public. The Preliminary Conference is not to be recorded by way of a video or tape recording or other electronic device without the prior approval of the Assessor and all of the participants in the Preliminary Conference.

14.6 If a party is represented, then the legal representative or agent with day-to-day conduct of the matter must, as far as is practicable, be available for a Preliminary Conference. In the case of an insurer without legal representation, the claims officer with day-to-day conduct of the matter must, as far as is practicable, be available for the Preliminary Conference.

14.7 If any party is, without reasonable excuse, unavailable at the time of a Preliminary Conference then the Assessor may conduct the Preliminary Conference in the absence of the party.

14.8 The Assessor must within 10 days of any Preliminary Conference send a Preliminary Conference report to the PCA and the parties advising:

14.8.1 the way in which the assessment is to proceed under clause 16.8;

14.8.2 what further documentation or information is required under clause 17.8; and

14.8.3 any other decisions made or directions given at the Preliminary Conference.

14.9 During the course of a Preliminary Conference the Assessor shall not enquire about the amount of any offers made by either party.

14.10 An Assessor shall not be disqualified from assessing a matter because the Assessor becomes aware in any manner of the amount of any offer. If the Assessor becomes aware of any offer the Assessor shall disregard that information for the purpose of assessing the claim.

Unsuitable for assessment under section 92(1)(b)

14.11 For the purpose of section 92(1)(b), an Assessor may, in dealing with an application for general assessment and following a preliminary assessment of the claim, determine that the claim is not suitable for assessment.

14.12 An Assessor may make a preliminary determination that a claim is not suitable for assessment on their own initiative or upon application by the claimant, the insurer, or both, at any time during the course of an assessment, after providing the parties with the opportunity to make submissions on that issue and considering any such submissions.

14.13 If the Assessor determines that the claim is not suitable for assessment, the matter must be sent within 5 days of making such a determination to the PCA for approval with a brief statement of reasons.

14.14 If the PCA approves the preliminary determination under section 92(1)(b), the PCA shall issue a certificate of exemption and notification to the parties within 5 days of the return of the matter from the Assessor.

14.15 If the PCA does not approve the preliminary determination, an officer of CARS is to advise the parties within 5 days of the return of the matter from the Assessor, and forward the matter to a different Assessor for assessment within 10 days of the return of the matter from the original Assessor.

14.16 In determining whether a claim is not suitable for assessment, an Assessor and the PCA shall have regard to the circumstances of the claim as at the time of consideration of the claim. This may include, but is not limited to:

14.16.1 whether the claim is exempt under section 92(1)(a) because the claim involves one or more of the circumstances set out in clause 8.11;

14.16.2 the heads of damage claimed by the claimant and the extent of any agreement by the insurer as to the entitlement to those heads of damage;

14.16.3 whether the claim involves complex legal issues;

14.16.4 whether the claim involves complex factual issues;

14.16.5 whether the claim involves complex issues of quantum or complex issues in the assessment of the amount of the claim including but not limited to major or catastrophic, spinal or brain injury claims;

14.16.6 whether the claimant has been medically assessed and is entitled to non-economic loss pursuant to section 131 and the claim involves other issues of complexity;

14.16.7 whether the claim involves issues of liability including issues of contributory negligence, fault and/or causation;

14.16.8 whether the claimant or a witness, considered by the Assessor to be a material witness, resides outside New South Wales;

14.16.9 whether the claimant or insurer seeks to proceed against one or more non-CTP parties; and/or

14.16.10 whether the insurer makes an allegation that a person has made a false or misleading statement in a material particular in relation to the injuries, loss or damage sustained by the claimant in the accident giving rise to the claim.

(Note: If an insurer makes an allegation of 'fraud' in terms of the circumstances of the accident, the matter will be exempt under section 92(1)(a) and clause 8.11.6. If an insurer makes an allegation that a person has made a false or misleading statement in a material particular in relation to the injuries, loss or damage sustained by the claimant in the accident, the insurer may be required to provide particulars in writing of the general nature of any such allegation under clause 17.13, and an Assessor may then consider whether a matter is not suitable for assessment under clause 14.11 to 14.16, particularly in light of clause 14.16.11.)

Chapter 15 - Assessment Conference

15.1 Where the Assessor notifies the parties of an intention to conduct an Assessment Conference the parties must advise the Assessor and the other party within 10 days of the notification:

15.1.1 whether or not they will be represented by an agent or legal practitioner and as far as is practicable the name of the legal practitioner or agent;

15.1.2 if an agent is to represent the party, the extent of the agent's authority;

15.1.3 whether or not an interpreter is required and if so the language; and

15.1.4 the names of any person who the party wishes the Assessor to question at the Assessment Conference.

15.2 The Assessor may direct the parties to the assessment to submit to the Assessor and to any other party to the assessment a signed statement detailing the evidence to be given by any witness to be questioned. If the witness does not attend the assessment, the statement by the witness need not be disregarded, and may be taken into account by the Assessor.

15.3 The Assessor may require the presentation of the respective cases of the parties to be limited to the periods of time that the Assessor determines are reasonably necessary for the fair and adequate presentation of the cases.

15.4 The Assessor shall determine the manner in which evidence is presented at an Assessment Conference, ensuring that:

15.4.1 each party is to be given an opportunity to address the Assessor on any issue in dispute and to put to the Assessor any questions that the party seeks that the Assessor ask or any areas that the party wants the Assessor to explore;

15.4.2 the examination of parties and witnesses is usually by the Assessor and questions to other parties or witnesses may only be put as directed by the Assessor;

15.4.3 the Assessor may, at the request of a party allow the questioning of a witness or a party, by either party's legal representative or agent, subject to any limitations as determined by the Assessor;

15.4.4 the Assessor may question any party or witness to such extent as the Assessor thinks proper in order to elicit information relevant to the claim; and

15.4.5 the Assessor cannot compel any party or witness to answer any question, but may have regard to the failure of a party or witness to answer a question in the determination of the assessment, unless the party has a reasonable excuse for that failure to answer.

15.5 The Assessor may adjourn a conference to another time and place at the request of a party or on the Assessor's own initiative.

15.6 The Assessor may conclude the conference to give effect to any agreed settlement reached by the parties.

15.7 During the course of an assessment, the Assessor shall not enquire about the amount of any offers made by either party.

15.8 An Assessor shall not be disqualified from assessing a matter because the Assessor becomes aware in any manner of the amount of any offer. If the Assessor becomes aware of any offer, the Assessor shall disregard that information for the purpose of assessing the claim.

15.9 An Assessor may not take into consideration in respect of the case of each party, reports (excluding reports from treating practitioners) from:

15.9.1 more than one medical expert in any specialty (unless there is a substantial issue as to a medical dispute referred to in section 58 – in which case two medical expert reports in any specialty relevant to the injury concerned may be allowed); and

15.9.2 experts in the same field of any other kind.

15.10. An Assessor may decide to take into consideration a greater number of reports than allowed in clause 15.9, and in deciding whether to take into account a greater number of expert reports in the claim the Assessor should consider:

15.10.1 the objects of the Act, and the objects of CARS;

15.10.2 clauses 12(1) and (2) of the *Motor Accidents Compensation Regulation 2020*; and

15.10.3 fairness to both parties.

15.11 If a claim, or a dispute in connection with a claim, is to be assessed by holding an Assessment Conference, the Assessment Conference is to be conducted between the Assessor, the claimant (and/or the claimant's legal representative or agent) and any parent, spouse, legal guardian, carer or other support person of the claimant, the insurer (and/or the insurer's legal representative or agent), and any interpreters or witnesses, or other persons the Assessor requires or allows to appear, and otherwise the Assessment Conference is not to be open to the public. The Assessment Conference is not to be recorded by way of a video or tape recording or other electronic device without the prior approval of the Assessor and all of the participants in the Assessment Conference.

Summons

15.12 In accordance with section 102, if a party fails to appear at an Assessment Conference, the PCA may issue a summons requiring their attendance at the time and date specified in the notice, being a day more than 10 days after the date of the issue of the summons.

15.13 The summons must be in the form approved by the Authority.

Representation

15.14 In accordance with section 104(2) a party may be represented at an Assessment Conference by a legal practitioner or an agent. A party may not be represented by more than one advocate without the prior approval of the Assessor.

15.15 A representative of the claimant and the insurer, each with full authority to settle and give instructions, must be present at any Preliminary Conference or Assessment Conference.

Assessment location

15.16 Unless the Assessor directs otherwise, the location at which an Assessment Conference is listed should be the location specified by the applicant in the application for general assessment.

15.17 The location must be a place where CARS is able to conduct an assessment according to the list of locations in Schedule 1.

15.18 If an Assessor seeks to list a matter for an Assessment Conference at a location other than those listed in Schedule 1, the Assessor must obtain the prior approval of the PCA to that proposed location.

Chapter 16 - Assessment procedure

Assessor's role

- 16.1 In conducting an assessment the Assessor may determine the Assessor's own procedure and is not bound by the rules of evidence and may inquire into any matter in such manner as the Assessor thinks fit.
- 16.2 The Assessor is to take such measures as are reasonably practicable to:
- 16.2.1 ensure that the parties to the application understand the nature of the application, the issues to be considered and the role of the Assessor as an independent decision-maker;
 - 16.2.2 explain to the parties any aspect of the procedure of the assessment, and any interim decision or ruling made by the Assessor during the course of the assessment, in respect of that procedure, that relates to the application;
 - 16.2.3 ensure that the parties have an opportunity to have their submissions considered; and
 - 16.2.4 ensure that the parties have had an opportunity to explore the settlement of the dispute.
- 16.3 The Assessor is to act with as little formality as the circumstances of the matter permit and according to equity, good conscience and the substantial merits of the matter without regard to technicalities and legal forms.
- 16.4 The Assessor is to take into account the objects of the Act and the objects of CARS at all times.
- 16.5 The Assessor is to ensure that relevant material is available so as to enable all of the relevant facts in issue to be determined.
- 16.6 The Assessor may admit into evidence the contents of any document that has previously been provided by one party to the other party, despite non-compliance with any time limit or other requirement specified in the Act or the Guidelines in relation to that document or service or exchange of it after taking into account any submissions of the parties.
- 16.7 The Assessor is to progress the resolution of the matter as quickly, fairly and cost effectively as is practicable
- 16.8 The Assessor shall determine the way in which an assessment is to proceed and may:
- 16.8.1 decide the elements of a claim on which oral evidence or oral argument may be submitted;
 - 16.8.2 direct that evidence or argument be presented in writing;
 - 16.8.3 direct that submissions be presented in writing;
 - 16.8.4 determine whether an Assessment Conference is necessary and the time and place for any Assessment Conference that is to be held;
 - 16.8.5 determine whether any other conference is necessary; and
 - 16.8.6 direct the number and/or type of witnesses who can give evidence at the conference.
- 16.9 Subject to the location of the Assessment Conference, the Assessor must hold such a conference within 25 days of the final preliminary assessment, or 25 days after compliance with all directions made by the Assessor, whichever is the later.

16.10 In accordance with section 104(5), if the Assessor intends to conduct separate Assessment Conferences in private with either of the parties or with relevant witnesses or experts, the Assessor must inform the parties before any such conference takes place.

16.11 For the purpose of section 104(6), an Assessor may make an assessment without conducting an Assessment Conference if satisfied that the information before the Assessor is sufficient to enable the Assessor to make a determination of the issues that are the subject of the assessment. In exercising the discretion not to hold an Assessment Conference, the Assessor must have regard to:

16.11.1 the complexity of the claim;

16.11.2 the likely quantum of the claim;

16.11.3 whether the credit of the claimant or any witness is in issue;

16.11.4 whether the matter is a general or special assessment; and

16.11.5 any submission by the parties as to why a conference is required.

16.12 When undertaking an assessment and making an assessment of the amount of damages for the claim under section 94(1), the Assessor is to assess damages in accordance with Chapter 5 of the Act in the same way in which a Court is required to assess damages.

Authorities and production of documents under section 100

16.13 For claims relating to accidents occurring after commencement of the amendment to section 100 made by the *Motor Accidents Compensation Amendment (Claims and Dispute Resolution) Act 2007* an Assessor may:

16.13.1 direct a claimant to execute an authority to a third party under section 100(c), authorising the release of documents in relation to the claim, however the authority may not be an authority directed to a Federal Government Agency who is otherwise empowered to refuse the production of documents to a Court on subpoena, such as the Health Insurance Commission, the Australian Taxation Office, or Centrelink; or

16.13.2 direct a third party to produce documents under section 100(1A), however the direction to produce to a third party:

16.13.2.1 must be made in a form approved by the Authority;

16.13.2.2 shall set out the time to produce, which shall be not less than 20 days;

16.13.2.3 must be accompanied by the appropriate fee to be paid by the party requesting the documents, in accordance with any Regulation under Chapter 6 of the Act that is in force; and

16.13.2.4 may be sent to the third party by the Assessor or, at the direction of the Assessor, by the party requesting the documents, or by another party.

16.14 The Assessor may make directions as to the exchange and provision of any information produced to, and between, the parties.

16.15 A person who fails without reasonable excuse to comply with an Assessor's direction under section 100, and clause 16.13 is guilty of an offence under section 100(2), which is subject to a maximum penalty of 50 penalty units.

Directions

16.16 The PCA or an Assessor may, at any time and from time to time, give such directions for the conduct of any assessment as appear convenient for the just, quick and cost-effective disposal of the matter.

16.17 The PCA or an Assessor may, at any time and from time to time, of their own initiative, appoint a date for a preliminary or other conference at which the PCA or the Assessor may give or make any such directions.

16.18 An Assessor may give directions on their own initiative or at the request of a party.

16.19 Without limiting the generality of clause 16.18, directions may relate to any of the following:

16.19.1 the lodgement of any application to MAS or CARS;

16.19.2 the defining of issues, including requiring the parties, or their legal practitioners, to exchange memoranda in order to clarify questions;

16.19.3 the provision of any essential particulars;

16.19.4 the filing of lists of documents, either generally or with respect to specific issues;

16.19.5 the delivery or exchange of experts' reports and the holding of conferences of experts;

16.19.6 the provision of copies of documents, including their provision in electronic form;

16.19.7 the service and filing of witness statements or other documents to be relied on;

16.19.8 the giving of evidence at any Assessment Conference, including whether evidence of witnesses must be given orally, or by affidavit or witness statement, or both;

16.19.9 the use of telephone or video conference facilities, videotapes, film projection, computer and other equipment and technology;

16.19.10 the provision of evidence in support of an application for an adjournment or amendment;

16.19.11 a timetable with respect to any issues to be dealt with, including a timetable for the conduct of any Assessment Conference; and/or

16.19.12 the filing of written submissions.

Chapter 17 - Documentation and other supporting material

17.1 Whenever a party submits copies of documents and other material (including videotape, CD, DVD, electronic image or file, film or photographs) in support of an application or reply, the party lodging the material must have already provided a copy of the material to every other party to the dispute.

17.2 Only copies of documents are to be lodged at CARS or with the Assessor.

17.3 An officer of CARS, or any Assessor is not to take into consideration any documentation or information that has not been provided to the other party, except as provided in this chapter.

Language of documents and other supporting material

17.4 All documents and other supporting material lodged must be in the English language, except where the document or other supporting material:

17.4.1 is accompanied by an English translation of the document; and

17.4.2 the English translation is supported by a declaration, made by the translator, in the English language, that the translation is an accurate translation of the document or other supporting material.

17.5 CARS may reject any documentation or other supporting material which does not comply with clause 17.4.

Surveillance images

17.6 In the case of surveillance images:

17.6.1 the images are to be provided to CARS in an unedited digital format; and

17.6.2 any investigator's or loss adjuster's report concerning those surveillance images must be provided with the images when provided to every other party and must be lodged at CARS with the images; and

17.6.3 surveillance images cannot be lodged at CARS or submitted to an Assessor unless they have been provided to each party.

17.7 If surveillance images have been provided by an insurer in support of an application or a reply, the claimant will be offered an opportunity to respond to the surveillance images and unless the claimant indicates otherwise, the claimant will be taken to have no objection to the Assessor considering the surveillance images.

Documents sought by Assessor

17.8 Subject to the restrictions in clause 17.9 and clause 17.10, the Assessor may direct a party to produce documents or furnish information to the Assessor and the other party and:

17.8.1 any such direction must be made in writing by the Assessor within 10 days of a Preliminary Conference;

17.8.2 any other parties to the assessment must, at the same time, be advised by the Assessor of the nature of the direction;

17.8.3 any documents or information requested are to be provided to the Assessor within 5 days of the date of the receiving the request or as the Assessor requests; and

17.8.4 if documents or information cannot be supplied within that time, the party must as soon as is practicable, apply to the Assessor for an extension of time, in which case the Assessor may set a further date.

- 17.9 An Assessor's request to produce documents or furnish information pursuant to this chapter can only be directed to the parties to the assessment.
- 17.10 The following documents or information are exempted from the operation of clause 17.8:
- 17.10.1 file notes, internal memoranda and estimates from the file of the insurer or the legal representative or agent of either party;
 - 17.10.2 legal advice, including Counsel's advice on any issue;
 - 17.10.3 draft statements, submissions or schedules;
 - 17.10.4 communications between the parties and their legal representatives; and
 - 17.10.5 documents that the Assessor accepts are exempted as the party in possession has a reasonable excuse for not providing them.
- 17.11 Subject to the restrictions in clause 17.12, the Assessor shall give a copy of any documents or information provided to the other party.
- 17.12 The following documents or information are exempted from the operation of clause 17.11:
- 17.12.1 material irrelevant to the case of either party and having no adverse effect on either party; and
 - 17.12.2 confidential material where there is a threat to life or the author of the report advises the report should not be made available to the claimant. Any party, officer of CARS, Assessor, or Court should advise the PCA of any of these grounds as soon as practicable.
- 17.13 If during the course of an assessment by an Assessor, or the determination by the PCA of an application for exemption, a party makes an allegation that a person has made a false or misleading statement in a material particular in relation to the injuries, loss or damage sustained by the claimant in the accident giving rise to the claim, the Assessor may require that party to give to the other party and the Assessor particulars in writing of the general nature of any such allegation (but not necessarily the evidence or proof of same), sufficient to enable the Assessor to determine whether or not the claim is suitable for assessment in accordance with the provisions in clauses 14.11 to 14.16.

Late additional documents

- 17.14 No additional documents or information sought to be added to the list of documents to be referred to the Assessor may be lodged by either party after the lodgement of their application or their reply, except:
- 17.14.1 by consent of the other party;
 - 17.14.2 before allocation to an Assessor, in response to a specific request or direction from the PCA, or an officer of CARS, in circumstances where:
 - 17.14.2.1 the PCA, or officer of CARS is satisfied that any such document would be of assistance to the conduct of the assessment; or
 - 17.14.2.2 the PCA is satisfied that appropriate circumstances exist; or
 - 17.14.3 after allocation to an Assessor, in response to a specific request or direction from the Assessor, in circumstances where:

17.14.3.1 the Assessor is satisfied that any such document would be of assistance to the conduct of the assessment; or

17.14.3.2 the Assessor is satisfied that appropriate circumstances exist; and any such documents must have been provided to the other party.

Chapter 18 - Certificate and statement of reasons

18.1 Upon completion of the assessment the Assessor is to send a certificate under section 94 or 96 to CARS.

18.2 The certificate and any statement of reasons should be provided to an officer of CARS within 15 days of the conclusion of any Assessment Conference, or in the absence of any Assessment Conference, within 15 days of the provision by the parties of all information and documentation sought by the Assessor at the Preliminary Conference or any date fixed by the Assessor. An officer of CARS will send a copy of any such certificate to all parties within 5 days of receipt.

18.3 The time fixed for the provision of the certificate and statement of reasons may not be extended by an Assessor except with leave of the PCA.

18.4 A certificate under section 94 or 96 is to have attached to it a statement of the reasons for the assessment. The statement of reasons is to set out as briefly as the circumstances of the assessment permit:

18.4.1 the findings on material questions of fact;

18.4.2 the Assessor's understanding of the applicable law if relevant;

18.4.3 the reasoning processes that lead the Assessor to the conclusions made; and

18.4.4 in the case of an assessment certificate pursuant to section 94, the Assessor must specify an amount of damages and the manner of determining that amount.

18.5 The Assessor may at any time issue a certificate in accordance with an agreed settlement, provided the terms of the agreed settlement are reduced to writing, signed by or on behalf of the parties and sighted by the Assessor, and the Assessor is satisfied that the terms of the agreed settlement are issues upon which the Assessor has power to make an assessment.

18.6 The Assessor may with the consent of both parties provide reasons orally at the Assessment Conference provided that, in accordance with section 94(4) and (5), a certificate is issued with a brief written statement summarising those reasons.

Privacy

18.7 CARS assessments are conducted in private and are not open to the public, under clause 14.5 and 15.11, and a certificate and any statement of reasons issued by an Assessor are not available to the public.

Accepting or rejecting an assessment

18.8 The method by which a party to an assessment accepts or rejects an assessment of the issue of liability for a claim (under section 95(1)) is to notify the other party in writing of the acceptance or rejection. In these cases the insurer is required to advise CARS in writing no later than 2 calendar months after the issue of the certificate of assessment, whether or not that certificate of assessment has as yet been accepted or rejected by either party.

18.9 The method by which a claimant accepts or rejects an assessment of damages for liability under a claim (under section 95(2)) is to notify the insurer in writing of the acceptance or rejection within 21 calendar days after the certificate of assessment was issued. In these cases the insurer is required to advise CARS in writing no later than 2 calendar months after the issue of the certificate of assessment, whether or not that certificate of assessment was accepted by the claimant.

DIVISION 4 - CORRECTIONS AND COSTS

Chapter 19 - Corrections

19.1 If a party to an assessment considers that the Assessor has made an obvious error in a certificate or a statement of reasons attached to the certificate, that party may make an application to the PCA to have the error corrected within 21 calendar days after the certificate of assessment was issued. (Note: This period is different to the obvious error correction period at MAS, which is set at 30 working days after the MAS certificate was sent to the parties, which is timed to be generally consistent with the period of time for lodging a MAS review. Instead this CARS obvious error correction period is timed to be consistent with the period for accepting a CARS assessment as set out in clause 18.9 of these Guidelines.)

19.2 Any such application is to be made in writing, setting out details of the obvious error and the terms of the suggested correction.

19.3 The party making the application is to send a copy of the application to the other party.

19.4 Examples of obvious errors in the certificate or statement of reasons include, but are not limited to:

19.4.1 an arithmetic, clerical or typographical error in the certificate or statement of reasons;

19.4.2 an error arising from an accidental slip or omission;

19.4.3 a defect of form; or

19.4.4 an obvious inconsistency between the certificate and the statement of reasons explaining the certificate.

19.5 Within 5 days of receiving the application the PCA shall acknowledge the application by writing to both parties, and the PCA may seek any further submissions from the parties.

Principal Claims Assessor's determination

- 19.6 In deciding whether or not there is an obvious error in the certificate the PCA may:
- 19.6.1 seek submissions from the parties to the assessment; and/or
 - 19.6.2 seek a response from the Assessor.
- 19.7 The PCA is to consider the application within 5 days of the application being acknowledged under clause 19.5.
- 19.8 In accordance with section 94(6), if the PCA is satisfied that there is an obvious error in a certificate as to an assessment or in the statement attached to the certificate, the PCA may:
- 19.8.1 issue a replacement certificate or statement of reasons; or
 - 19.8.2 approve the Assessor issuing a replacement certificate or statement of reasons; that corrects the obvious error that was sought to be corrected and that will replace the previous certificate.
- 19.9 If a replacement certificate or statement of reasons is issued, the replacement certificate or statement is to:
- 19.9.1 be titled as a 'replacement' certificate or statement of reasons;
 - 19.9.2 be dated the same day as the original certificate or statement of reasons, and also identify the date the replacement certificate was issued; and
 - 19.9.3 be taken to be the decision of the Assessor or the reasons for the decision.
- 19.10 If the certificate or statement of reasons is replaced, the PCA or Assessor must send the parties a copy of the replacement certificate or statement of reasons within 5 days of the PCA's determination in clause 19.8.

Chapter 20 - Costs

- 20.1 Pursuant to section 94A and any Regulation under Chapter 6 of the Act that is in force, an Assessor may, when assessing a claim, make an assessment of the amount of the claimant's entitlement to costs.
- 20.2 Costs are to be assessed pursuant to relevant provisions of the Act and any Regulation under Chapter 6 of the Act that is in force.
- 20.3 An assessment is to include an amount of costs in respect of the legal costs associated with the assessment of any medical disputes.
- 20.4 If a claimant fails, without reasonable excuse, to attend, or cancels at short notice, a medical examination arranged by the insurer, without reasonable excuse, and as a result a non-attendance fee or cancellation fee is incurred, the insurer may have credit for any such non-attendance or cancellation fee.
- 20.5 If there is a dispute over the apportionment of costs between 2 or more firms of solicitors, the Assessor is to apportion the amount of costs allowed according to the proportion of work undertaken and the stages of work undertaken by the firms.
- 20.6 When assessing the costs of a CARS assessment, the Assessor shall have regard to the amount of any written offer of settlement made by either party and, if the claim is made on or after 1 October 2008, section 89D.

20.7 The Assessor's certificate issued pursuant to section 94 and 96 and clause 18.1 of these Guidelines is to include an assessment of the claimant's costs and disbursements.

20.8 The Assessor's statement of reasons in respect of the assessment of costs is to attach to it a calculation of the claimant's costs and disbursements and set out as briefly as the circumstances permit in respect of any disputed costs or disbursements:

20.8.1 the amount claimed;

20.8.2 the amount allowed; and

20.8.3 brief reasons for not allowing the amount claimed.

CARS APPROVED ASSESSMENT LOCATIONS

- Sydney
- Albury
- Armidale
- Bathurst
- Bega
- Broken Hill
- Byron Bay
- Campbelltown
- Canberra
- Coffs Harbour
- Cowra
- Dubbo
- Forbes
- Forster
- Glen Innes
- Gosford
- Goulburn
- Griffith
- Lismore
- Lithgow
- Maitland
- Muswellbrook
- Newcastle
- Nowra
- Orange
- Penrith
- Port Macquarie
- Queanbeyan
- Tamworth
- Taree
- Wagga Wagga
- Wollongong
- Young

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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Catalogue no. SIRA09121 | ISBN 978-0-7347-4644-3 © State Insurance Regulatory Authority NSW 0121

NOTICE OF PORT OPERATOR DIRECTION

(STOPPING AND PARKING OF VEHICLES, UNATTENDED TRAILERS AND GOODS)

Port Kembla

Ports and Maritime Administration Act 1995 (NSW)
NSW Ports – Direction 3 of 2021 (replacing Direction 4 of 2020)

Powers & functions of the port operator of a private port

This notice contains a port operator direction issued by NSW Ports in its capacity as the port operator of the private port of Port Kembla under Part 3A of the *Ports and Maritime Administration Act 1995* (NSW) (**PAMA Act**), for the purposes of maintaining and improving safety and/or security given that the activities or works (defined below) pose a risk to safety and/or security at Port Kembla (**Notice**).

This Notice was issued to the Harbour Master of Port Kembla on 10 February 2021 as required under the PAMA Act.

Pursuant to section 38(2) of the PAMA Act, a port operator direction given by notice published on a port operator's website is of no effect until a copy of the notice has been published in the Gazette.

This Notice takes effect on the later of 25 February 2021 and the date on which it is published in the Gazette.

*****PORT OPERATOR DIRECTION*****

TAKE NOTICE: Persons are PROHIBITED from:

- stopping and/or parking vehicles (including trailers) in a place not prescribed as a stopping or parking space or in any way contrary to a stopping line, stopping sign, stopping zone, parking line, parking sign or parking zone;
- leaving trailers unattached or unattended; and
- leaving goods (including containers) unattended (including leaving goods unattended on or in vehicles or trailers),

on a Prescribed Road or in a Prescribed Area as identified in the location map in Annexure A to this Notice.

Compliance & Enforcement

FAILING TO COMPLY WITH THIS NOTICE IS A CONTRAVENTION OF SECTION 39 OF THE PAMA ACT

NSW Ports may enforce compliance with this Notice by:

- removing from Port Kembla any person who is contravening this Notice;
- removing from Port Kembla, or moving within Port Kembla, any vehicle (including a trailer or container) that is stopped or parked in contravention of this Notice, at the non-complying party's cost; and/or



- removing from Port Kembla, or moving within Port Kembla, any goods stored or left unattended in contravention of this Notice, at the non-complying party's cost.

A person who obstructs or otherwise interferes with an Authorised Officer of the port operator performing their functions (including the giving or enforcing of a direction under this Notice) faces a **maximum penalty of 50 penalty units**, being \$5,500.00 (at the date of issue).

For the purposes of this Notice:

Authorised Officer means an employee or agent of NSW Ports.

NSW Ports means Port Kembla Operations Pty Limited, being the port operator under the PAMA Act for the private port of Port Kembla.

Port Kembla means the land within the port land lease boundary at Port Kembla as identified in the location map in Annexure A.

Prescribed Area means the area marked as a prescribed area as identified in the location map in Annexure A.

Prescribed Road means a roadway identified as a prescribed road (including the shoulder and any adjoining nature strip) in the location map in Annexure A.

Contact details:

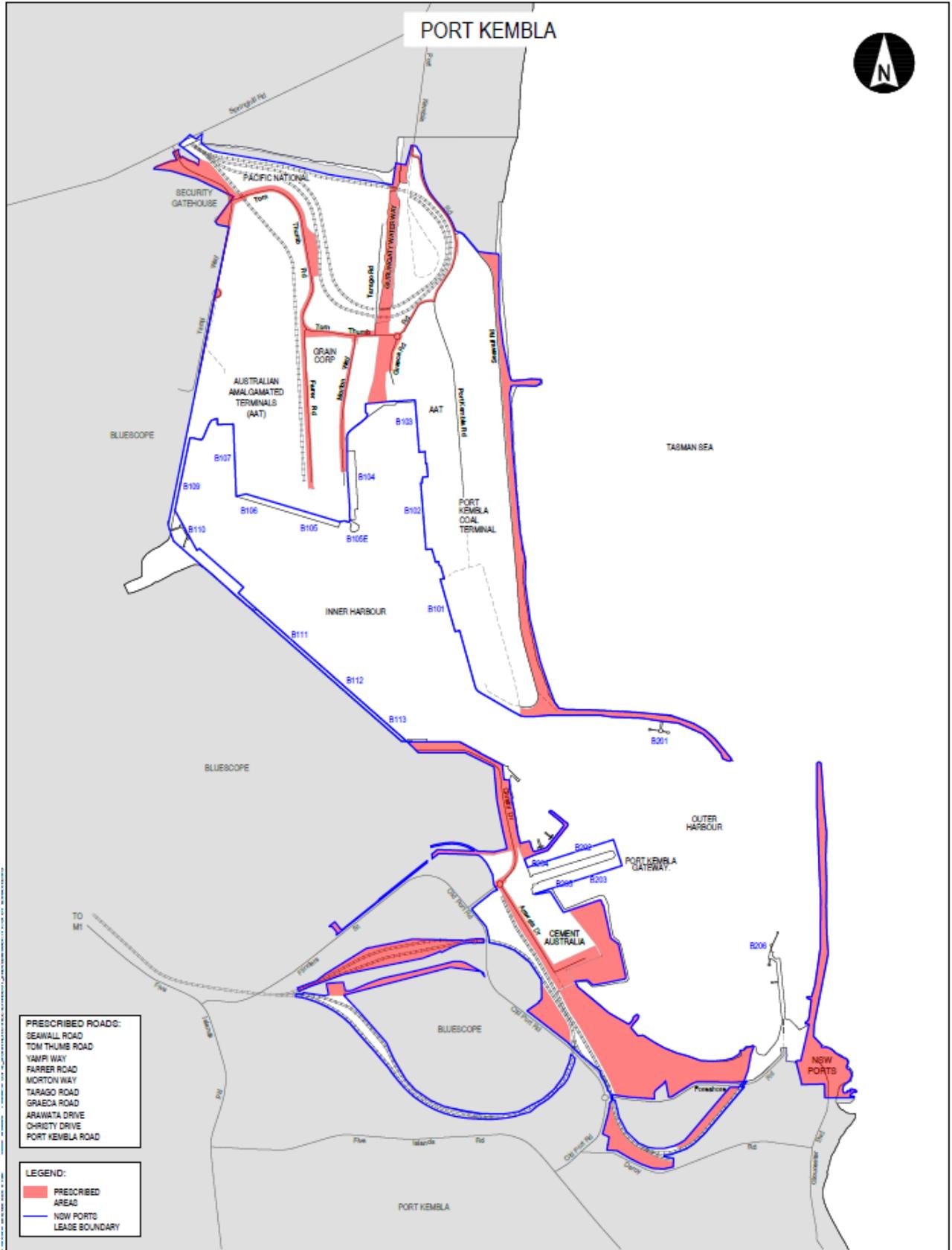
For general enquires:

Company Secretary

Email: companysecretary@nswports.com.au

Phone: 1300 922 524

Annexure A



NOTICE OF PORT OPERATOR DIRECTION

(NO UNAUTHORISED WORKS)

Port Kembla

Ports and Maritime Administration Act 1995 (NSW)
NSW Ports – Direction 4 of 2021 (replacing Direction 3 of 2020)

Powers & functions of the port operator of a private port

This notice contains a port operator direction issued by NSW Ports in its capacity as the port operator of the private port of Port Kembla under Part 3A of the *Ports and Maritime Administration Act 1995 (NSW) (PAMA Act)*, for the purposes of maintaining and improving safety and/or security given that works (defined below) pose a risk to safety and/or security at Port Kembla (**Notice**).

This Notice was issued to the Harbour Master of Port Kembla on 10 February 2021 as required under the PAMA Act.

Pursuant to section 38(2) of the PAMA Act, a port operator direction given by notice published on a port operator's website is of no effect until a copy of the notice has been published in the Gazette.

This Notice takes effect on the later of 25 February 2021 and the date on which it is published in the Gazette.

*****PORT OPERATOR DIRECTION*****

TAKE NOTICE: Persons are PROHIBITED from undertaking any Works on, to, over or under land within the port land lease boundary of Port Kembla comprising a Prescribed Road or a Prescribed Area (as identified in the location map in Annexure A to this Notice) without the prior written consent of NSW Ports.

Compliance & Enforcement

FAILING TO COMPLY WITH THIS NOTICE IS A CONTRAVENTION OF SECTION 39 OF THE PAMA ACT

NSW Ports may enforce compliance with this Notice by:

- removing from Port Kembla any person who is contravening this Notice;
- removing from Port Kembla, or moving within Port Kembla, any vehicle (including a trailer or container) that is stopped or parked in contravention of this Notice, at the non-complying party's cost;
- removing from Port Kembla, or moving within Port Kembla, any goods stored or left unattended in contravention of this Notice at the non-complying party's cost; or
- carrying out work that a person has failed to carry out in contravention of this Notice or that is reasonably required to be carried out to remedy a contravention of this Notice (provided, other than in an emergency, no less than 7 days' notice is provided to the person who failed to carry out the work), at the non-complying party's cost.

A person who obstructs or otherwise interferes with an Authorised Officer of the port operator performing their functions (including the giving or enforcing of a direction under this Notice) faces a **maximum penalty of 50 penalty units**, being \$5,500.00 (at the date of issue).

For the purposes of this Notice:

Authorised Officer means an employee or agent of NSW Ports.

NSW Ports means Port Kembla Operations Pty Limited, being the port operator under the PAMA Act for the private port of Port Kembla.

Port Kembla means the land within the port land lease boundary at Port Kembla as identified in the location map in Annexure A.

Prescribed Area means the area marked as a prescribed area as identified in the location map in Annexure A.

Prescribed Road means a roadway identified as a prescribed road, including the shoulder and any adjoining nature strip, in the location map in Annexure A.

Works means any activity howsoever described including building, construction, repair, maintenance, engineering, structural, surveying, inspection, environmental, rectification or remediation works (including the taking of photos or video footage).

What you must do in order to obtain the written consent of NSW Ports to undertake Works:

In order for NSW Ports to properly consider providing its consent for you to undertake any proposed Works, you must do the following:

1. notify the appropriate contact person (see contact details below) **at least 7 days prior to the commencement of such Works**, and provide the following information (as a minimum):
 - details of the exact location(s) of the proposed Works, including a layout plan or marked-up map or diagram;
 - date(s) on which the Works are to be performed;
 - a scope of works for the Works;
 - details of persons engaged to perform Works;
 - contact details for a designated person who will supervise/manage the Works;
 - a communication plan to notify other relevant stakeholders (e.g. neighbouring tenants) as required; and
 - applicable safe work method statements, job safety analyses and/or safety management plans that address any risks or hazards relevant to the location and the nature of the proposed Works including, but not limited to, those which may be advised to you by NSW Ports;
2. complete the registration of all persons undertaking the Works in NSW Ports' *Rapid Global* system (or as otherwise directed by NSW Ports), which involves providing relevant contact details, submitting insurances and answering a HSE pre-qualification questionnaire (NSW Ports' contact person will supply details on how to complete this step); and

3. provide evidence, which in the opinion of the NSW Ports' contact person is satisfactory, that all persons nominated as undertaking the Works have successfully completed all applicable induction/s (via *Rapid Global* or as otherwise directed by NSW Ports) plus any other relevant third-party inductions.

Contact details:

For proposed Works at **Port Kembla**, limited to the taking of photos or recording video footage:

Corporate Affairs Lead

Email: enquiries@nswports.com.au

Phone: 1300 922 524

For all other proposed Works at **Port Kembla**:

Asset Manager

Email: pkam@nswports.com.au

Phone: 1300 922 524

For general enquires:

Company Secretary

Email: companysecretary@nswports.com.au

Phone: 1300 922 524

Annexure A

