

# Claims Assessment Guidelines

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# Contents

Publication Note .....	4
Replacement and Transition .....	4
Legislative Framework .....	4
Guideline Making Powers .....	5
Interpretation of the Guidelines.....	5
Commencement of the Guidelines.....	5
Purpose of the Guidelines.....	5
Application of the Guidelines.....	5
Compliance with the Guidelines.....	5
DIVISION 1 - INTRODUCTION AND REGISTRY .....	6
Chapter 1 - Introduction and interpretation .....	6
Introduction and commencement date .....	6
Definitions.....	6
Objects of CARS.....	8
Chapter 2 - Jurisdiction .....	10
Chapter 3 - Referrals to the CARS registry .....	10
Chapter 4 - Interpreters .....	14
Chapter 5 - Time .....	14
Abridgement or extension of time .....	14
Reckoning of time.....	14
Chapter 6 - Delivery of documents .....	15
Chapter 7 - Electronic dispute management system.....	15
Establishment of an EDM system .....	15
DIVISION 2 - APPLICATION TYPES.....	16
Chapter 8 - Exemption of claims from general assessment (section 92(1)(a)) .....	16
Applications (CARS forms 1A and 1R).....	16
Time limits for referring claims for exemption .....	17
Determination Review .....	17
Dismissal of exemption application.....	18
Chapter 9 - General assessment (section 94).....	18
Applications (CARS forms 2A and 2R).....	18
Chapter 10 - Further general assessment (section 111) .....	19
Applications (CARS forms 3A and 3R).....	19

Chapter 11 - Special assessment (section 96) .....	20
Applications (CARS forms 5A and 5R) .....	20
DIVISION 3 - ALLOCATIONS AND ASSESSMENTS .....	20
Chapter 12 - Allocation .....	20
Allocation Review .....	20
Further information or documentation required.....	21
Defer allocation .....	21
Allocation for assessment.....	22
Chapter 13 - Dismissal.....	23
Chapter 14 - Preliminary assessment and Preliminary Conference .....	23
Unsuitable for assessment under section 92(1)(b) .....	24
Chapter 15 - Assessment Conference.....	25
Summons .....	27
Representation.....	27
Assessment location .....	27
Chapter 16 - Assessment procedure.....	28
Assessor's role.....	28
Authorities and production of documents under section 100.....	29
Directions .....	30
Chapter 17 - Documentation and other supporting material.....	30
Language of documents and other supporting material .....	31
Surveillance images .....	31
Documents sought by Assessor.....	31
Late additional documents .....	32
Chapter 18 - Certificate and statement of reasons .....	33
Privacy.....	33
Accepting or rejecting an assessment .....	34
DIVISION 4 - CORRECTIONS AND COSTS .....	34
Chapter 19 - Corrections .....	34
Principal Claims Assessor's determination .....	35
Chapter 20 - Costs.....	35
CARS APPROVED ASSESSMENT LOCATIONS .....	37

## 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	<b>Act</b>	<i>Motor Accidents Compensation Act 1999</i>
1.4.2	<b>Allocation Review</b>	A consideration of an application for under and/or reply pursuant to Chapter 12.
1.4.3	<b>Applicant</b>	The party who initiates the referral of a claim or dispute in connection with a claim.
1.4.4	<b>Application</b>	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	<b>Assessor</b>	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	<b>Authority</b>	State Insurance Regulatory Authority (SIRA)
1.4.7	<b>CARS</b>	Motor Accidents Claims Assessment and Resolution Service of the Authority.
1.4.8	<b>Claimant</b>	A person who makes or is entitled to make a claim under the Act.

1.4.9	<b>Claims Assessor</b>	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	<b>CTP</b>	Compulsory Third Party
1.4.11	<b>CTP Assist</b>	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	<b>Determination Review</b>	A consideration of an application for exemption from assessment and/or reply under Chapter 8.
1.4.13	<b>EDM system</b>	An electronic dispute management system established by the Authority.
1.4.14	<b>ET Act</b>	<i>Electronic Transactions Act 2000</i> , as amended from time to time.
1.4.15	<b>Form</b>	A form approved by the Authority that may contain an application and/or a reply to an application.
1.4.16	<b>Injured person</b>	A person who has suffered an injury that is the subject of a claim made under the Act.
1.4.17	<b>Insurer</b>	Any party against whom a claim is made under the Act.
1.4.18	<b>Licensed insurer</b>	An insurer that is the holder of a license granted under Part 7.1 of the Act and in force.
1.4.19	<b>MAS</b>	Motor Accidents Medical Assessment Service of the Authority.
1.4.20	<b>MAS Assessor</b>	A Medical Assessor appointed by the Authority under section 59.
1.4.21	<b>Matter</b>	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	<b>Officer of CARS</b>	An officer of the Authority undertaking work in CARS as directed by, or as delegated by the PCA.
1.4.23	<b>PCA</b>	Principal Claims Assessor of the Authority appointed by the Minister under section 99A.
1.4.24	<b>Person under legal incapacity</b>	includes: (a) a child under the age of 18 years;

		<p>(b) a temporary patient, continued treatment patient or forensic patient within the meaning of the <i>Mental Health Act 2007</i>;</p> <p>(c) a person under guardianship within the meaning of the <i>Guardianship Act 1987</i>;</p> <p>(d) a protected person within the meaning of the <i>NSW Trustee and Guardian Act 2009</i>; and</p> <p>(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.</p>
1.4.25	<b>Registry</b>	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	<b>Regulation</b>	<i>Motor Accidents Compensation Regulation 2020</i>
1.4.27	<b>Reply</b>	The form by which a respondent answers an application.
1.4.28	<b>Respondent</b>	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

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