



# MAIA Common Law Procedure Ready Reckoner



# MAIA Common Law Procedure Ready Reckoner

Topic	Section	Detail
<b>Claims</b>		
Late Claims	S 6.14(2)	A Common Law claim cannot be made <b>more than 3 years</b> after the accident <b>UNLESS</b> the Claimant provides a full and satisfactory explanation for delay.  <b>Note:</b> The Insurer loses the right to challenge the claim on the grounds of delay if the claim / explanation is not rejected within 2 months of receipt.
<b>Liability Determination</b>		
Liability Notice	S 6.20(1)	The Insurer must serve a Liability Notice as expeditiously as possible and, in any event, <b>within 3 months</b> of the claim being made.  <b>Note:</b> Liability can be denied where fault is disputed and/or where the Claimant's only injuries are threshold injuries.
Unreasonable Denials	S 6.21	A Claims Assessor may impose a penalty, by increasing regulated costs by 25%, where an Insurer's liability determination is not reasonable, based on provable facts and a reasonably arguable view of the law.
<b>Particulars and Offers</b>		
Claimant's Duty to Co-operate	S 6.24	The Claimant must co-operate fully by providing the Insurer with <b>INFORMATION</b> to satisfy the Insurer that the claim is valid, to assist the Insurer to assess liability and to assist the Insurer to make an informed offer of settlement.  <b>Note:</b> This is broader than the Claimant's obligation in s 6.25 to provide relevant particulars.
Claimant's Duty to Provide Relevant Particulars	S 6.25	The Claimant must provide all relevant particulars about the claim `as <i>expeditiously as possible</i> '.  ' <i>Relevant particulars</i> ' include full details of: <ul style="list-style-type: none"> <li>• the motor accident;</li> <li>• the injuries sustained;</li> <li>• the disabilities and impairments arising from the injuries; and</li> <li>• any economic loss and other losses being claimed as damages.</li> </ul>
Deemed Withdrawal	S 6.26	If the Claimant has not provided Section 6.25 Particulars within <b>2 years and 6 months</b> of the motor accident, the Insurer has a 2-month window to serve a Notice requiring those particulars.  The claim is deemed withdrawn if the Claimant fails to provide Section 6.25 Particulars within <b>3 months</b> of the notice.  <b>Note:</b> Sub-sections (4) to (7) set out the procedure the Claimant must follow to reinstate the claim.
Inadequate Relevant Particulars	S 6.22(5)	The Insurer is not entitled to delay making an offer on the ground that particulars are insufficient unless the Insurer has made a request for further relevant particulars within <b>2 weeks</b> of the Claimant providing particulars.

Topic	Section	Detail
Insurer's Duty to Make and Offer	S 6.22(1)	<p>The Insurer must make a reasonable offer of settlement 'as soon as practicable' unless the insurer wholly denies liability.</p> <p>The duty does not arise where:</p> <ul style="list-style-type: none"> <li>• The claim is in respect of the death of a person; or</li> <li>• PIC has declined to assess the Claimant's WPI because their impairment has not yet become permanent.</li> </ul> <p>Section 6.22(5) implies that it not 'practicable' for an Insurer to make an offer until the Claimant fully complies with s 6.25 by providing relevant particulars.</p>
<b>Exemption from PIC</b>		
Mandatory Exemption	S 7.34(1)(a) Reg 14 MAIR	<p>The mandatory grounds for exemption from PIC assessment of damages are:</p> <ul style="list-style-type: none"> <li>• Claimant under a legal incapacity (either CTP or CTR);</li> <li>• Claim made against person not an insurer;</li> <li>• Claim in which the Insurer has alleged fraud in writing; and</li> <li>• Claim in which the Insurer has denied indemnity in writing.</li> </ul>
Discretionary Exemption	S 7.34(1)(b) Clause 99 PIC Rules	<p>The discretionary grounds for exemption from PIC assessment of damages are found in Clause 99 of the <i>Personal Injury Commission Rules 2021</i>.</p>
<b>PIC Assessment of Damages</b>		
Pre-conditions	S 7.32(3)	<p>The only pre-condition to lodging a PIC Application is that the parties can only do so after using their 'best endeavours' to resolve the claim.</p>
Status of Assessments	S 7.38	<p>A PIC assessment of liability is not binding on either party.</p> <p>A PIC assessment of damages is binding on the Insurer if the Insurer accepts liability and the Claimant accepts the assessment within <b>21 days</b>.</p>
<b>Court Proceedings</b>		
Limitation Period	S 6.32	<p>The Claimant cannot commence Court proceedings more than 3 years after the motor accident without first obtaining leave.</p> <p>Time stops running on the 3-year limitation period, however, from the date the claim is referred to PIC for an assessment of damages to a date 2 months after the Assessment Certificate is issued.</p> <p><b>Note:</b> Sub-sections (3) to (6) set out the criteria for obtaining leave.</p>
Pre-conditions	S 6.31	<p>The Claimant cannot commence Court proceedings without either an Exemption Certificate (s 7.34) or an Assessment Certificate (s 7.36).</p>
Notice to Commence	S 6.33	<p>The Insurer may serve a Notice requiring the Claimant to commence proceedings if the Claimant has been entitled to commence proceedings for a period of <b>6 months</b>.</p> <p>The claim is deemed to be withdrawn if the Claimant fails to comply with the notice within <b>3 months</b>.</p> <p><b>Note:</b> Sub-sections (4) and (5) set out the criteria for reinstatement.</p>