

The first months:  
Practical, insurance,  
legal & financial matters

Booklet 3

Help in coping:

When someone dies in a road accident

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Australian Capital Territory Magistrates Court, Canberra, Australia

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In memory of Colin Rodgers. To all those who have died on Canberra's roads. For all those bereaved by a road accident in Canberra, and for those helping them.

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#### **DISCLAIMER**

This booklet is designed as a guide, not as legal advice. Every endeavour has been made to ensure the accuracy of the contents of this booklet at the time of publication. Readers should be aware that policies and procedures of the organisations referred to in this booklet, and relevant laws, may change after publication.

#### **USE OF THIS MATERIAL**

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#### **HOW TO USE THIS BOOKLET**

For definitions of **specialised terms**, > see the *Glossary* at the end of this booklet.

For **contact information** on organisations or services, > see *Booklet 8*.

For further information on **coronial procedures** and **preparing for the inquest (hearing)**, > see *Booklets 1* and *4*.

# 1 NOTIFICATIONS & PAPERWORK: AN OVERVIEW

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## 1 CHECKLIST: NOTIFICATIONS & OTHER THINGS TO DO

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### First priorities

- If a driver may have been at fault:** contact the Compulsory Third Party insurer (or contact the relevant government body if a government vehicle may have been at fault). **Time limits may apply** (> see *Chapter 5*).
- If your vehicle was involved in the accident,** report the accident to your motor vehicle insurance company. Do this as soon as possible. **Time limits may apply.** > See also *Chapter 7*.  
Some insurers or motoring clubs offer various forms of **immediate assistance** (> see *Booklet 2*).
- Consult a doctor as soon as possible,** especially if you were injured in the accident or feel you may suffer from nervous shock or post traumatic stress; legal difficulties may arise later, if delayed (> see *Chapter 5*).
- Seek legal advice** (> see *Chapters 2 and 4*).
- Start now to take notes and **document** your experiences, contacts, expenses, loss of wages, etc. (where relevant), particularly if there is any likelihood of claiming compensation (> see also *Chapters 2 and 5*).
- Apply for the **death certificate** (if not done already through your funeral director) (> see below).

### Second priorities

If you have not done so earlier, notify the following organisations (where relevant) of the death of your family member:

- employer(s)
- Centrelink
- banks/other financial institutions (bank accounts, credit cards, etc.) (> see also *Access to bank accounts* in *Chapter 3*)
- other insurer(s) (life; accident/disability/income protection; home building and contents)
- superannuation fund(s)
- hire-purchase companies
- private health insurance fund
- Department of Veterans' Affairs.

## Third priorities

- motor vehicle registry
- Medicare
- Australian Taxation Office
- Australian Electoral Office
- organisations of which the person who died was a member (clubs, religious institutions, unions, professional bodies, etc.)
- providers of medical services (doctors, dentist, etc.)
- any other organisation or person where there may be financial or administrative repercussions resulting from the person's death.

## Notification form

It may be necessary to send these organisations a notice in writing so that they can amend their records. You may need to include reference numbers such as a bank account number or Medicare number. A sample form is provided (> see below).

Make important notifications and lodge claims promptly even if you don't have all of the necessary documents now. Supporting documentation can be provided later, as a general rule.

## 2 PERSONAL FINANCIAL MANAGEMENT

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You may need to:

- Request a change of the name in which an account or bill is presented – e.g. listing in telephone book, rates – or have a service cancelled.
- In your own insurance policies and superannuation documents: change names of policy holders and beneficiaries, where relevant.
- Check if loan agreements (or debts):
  - are in the person's name only or in joint names
  - have loan protection insurance.
- Claim amounts owed (> see *Chapter 11*).
- Ensure bills are paid, or inform agencies of payment difficulties:
  - Try to estimate your income and bills for the next few months.
  - Make a list of all agencies to which money is owed (creditors), and of the amounts owed.
  - Where relevant, inform each creditor of the person's death.
  - Draw up a proposed payment schedule. Ask creditors for delays in payment or propose a payment schedule.
  - It is better to inform creditors early on of your circumstances than to allow bills or loans to go unpaid without giving notification.
  - Providers of utilities (electricity, water and sewerage, gas, telephone) often accept delayed payment where hardship may be involved.

- Seek assistance from family, friends or community agencies (emergency financial assistance, help with problems with creditors and advice on financial management) (> see also *Chapter 2* and *Booklet 8*).

### 3 DOCUMENTS TO LOCATE

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The documents listed below may be needed for a variety of purposes (> see above, *Personal financial management*, and *Chapter 11*):

#### Documents (where relevant)

- will
- marriage certificate(s)
- home (property deed; mortgage papers, home loan; lease)
- insurance policies (motor vehicle; life; accident/disability/income protection; home building and contents; health fund; etc.)
- superannuation records
- bank records (cheque, savings, term deposits, credit cards) (bank, building society, credit union, cash management trust, etc.)
- other loans or hire-purchase documents
- bills and accounts (telephone, electricity, rates, water and sewerage, gas, motor vehicle registration, insurance)
- income records
- motor vehicle registration
- any other documents concerning income, assets, debts, insurance coverage.
- birth certificate(s)
- divorce papers
- tax records
- driver's licence
- passport

#### Where to search

- home
- safety deposit box
- union/professional organisation
- accountant
- insurance agent/broker
- court (the will may have been lodged with Registrar of the Supreme Court).
- bank(s)
- employer(s) (yours, the deceased's)
- solicitor
- financial adviser, stockbroker
- Public Trustee

### 4 LODGING FORMS & DOCUMENTS

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Make (and keep) a photocopy of any letter or completed form you send to an agency. Keep all correspondence you receive from an agency.

#### Which documents will I need?

The chart below (> see *Examples of documents needed for certain purposes*) gives an indication of documents commonly needed. Ask each agency you deal with precisely *which documents* it requires and whether it requires *originals* or accepts *copies*.

**NOTIFICATION OF DEATH**

I am sorry to have to advise you of the death of:

Mr/Mrs/Miss/Ms .....  
.....

of .....  
.....

on .....

Please modify your records. A reference number in relation to your  
organisation is:.....  
.....

If further information or action is necessary, please contact me as follows:

Mr/Mrs/Miss/Ms .....  
of .....  
.....

Telephone .....

Relationship to the deceased .....

Date .....

Signed .....

## Examples of documents needed for certain purposes

Agency/ Purpose	TYPE OF DOCUMENT					Other documents
	<i>Extract/ photocopy/ sight and return original/ photocopy certified by justice of the peace</i>	<i>Original (certified copy)</i>				
	<b>death certificate</b>	<b>death certificate with cause of death</b>	<b>birth certificate(s)</b>	<b>marriage certificate</b>	<b>divorce decree</b>	
				(where relevant)		
<b>probate</b> (if valid will)	Supreme Court accepts interim death certificate  (without cause of death)					for probate: <b>2 probate engrossments</b> (including <b>2 photocopies of will</b> ) <b>will</b> (original)
<b>letters of administration</b> (if no valid will)			of deceased of all relevant family members			for probate and letters of administration: <b>application form</b> <b>affidavit of applicant</b> <b>affidavit of search</b>
<b>life insurance</b>		usually	of deceased	#	#	<b>application form #</b> <b>policy documents</b> <i>certified copy of will/ grant of probate/ letters of administration</i> <b>coroner's report #</b>
<b>motor vehicle insurance</b>		#			#	<b>claim form #</b> <i>insurer will request directly from police/coroner:</i> <b>police report; toxicology report</b> (for alcohol/drugs); <b>witness statements;</b> <b>coroner's report</b>
<b>superannuation</b>	#	#	of all relevant family members #	#		<i>certified copy of will/grant of probate/letters of administration #</i> <b>policy documents #</b> <b>application form #</b>
<b>bank/credit union:</b> • if requesting payment of funeral expenses • for release of funds generally						<b>funeral account (or death notice in newspaper)</b>  <b>probate or letters of administration</b>
<b>private health fund</b>						

**NOTE: # Sometimes**

## Originals, copies & registered mail

Official documents are precious (they can be difficult or expensive to replace). Keep them in a safe place.

- In many circumstances, a *photocopy certified by a justice of the peace* (or other authorised person) will be acceptable (> see the yellow pages of the telephone book for justices of the peace).
- If an agency needs to sight the original document:
  - If dealing with an agency *by mail* – use *registered mail* to send the document (and ask the agency to return the document by registered mail).
  - If going to an agency *in person* – you can deliver the document by hand and the agency can make a photocopy of it.

If an agency wishes to *retain* the *original*, ask them to clarify why.

### ‘CERTIFIED COPY’ – A NOTE ON TERMINOLOGY

If an agency specifies a ‘certified copy’, ask it to clarify whether it is referring to:

- a **certified copy** issued by the relevant government authority (what most people would call an ‘original’ or ‘certified original’); or
- a **photocopy certified by a justice of the peace** (or other authorised person) to be a true copy of the original document (which may also be referred to as a ‘certified copy’).

## Delays for certain documents

It is likely you will encounter delays in obtaining certain documents, particularly those concerning the cause and circumstances of the death (> see below and see also *Chapter 4*). However, you can and should still notify relevant agencies of the person’s death; supporting documentation can be supplied later.

## 5 DEATH CERTIFICATE

### Types of death certificate

#### **Certified copy**

This is a full version of the death certificate. It constitutes a ‘copy’ of all of the relevant details concerning the deceased from the ACT Register of Deaths. (Despite the terminology used, this is an *original* death certificate: the original document is the ACT Register of Deaths, and the death certificate is a document officially copied from that register.)

Because of the timing of the coronial procedures required to establish the cause of death (> see also *Booklet 4*), two successive versions of the certified copy are likely to be issued if a certificate has been applied for:

- **interim (*without cause of death – awaiting the coroner’s finding*)**

It can usually be issued within two weeks from the date of the funeral (assuming your application was lodged through your funeral director soon after the person’s death).

- **final (*with* cause of death – containing the coroner’s finding)**

It cannot be issued until after the coroner has delivered a finding concerning the cause of death and has advised the Registrar-General. This usually takes place after the coronial hearing – usually *several months* after the death (> see also *Chapter 4*).

### **Certified extract**

This is a short version of the death certificate: only the name, date and place of death of the deceased are ‘extracted’ (taken) from the ACT Register of Deaths. It does not include the cause of death (and can therefore be issued before the coroner has delivered a finding). However, it is not in common use, so it may be more beneficial to obtain a certified copy rather than a certified extract.

### **Do I need to apply for a death certificate?**

A death certificate is not issued automatically; if you require one, you must lodge an application (and pay a fee):

- If you have *already* lodged an application through your funeral director – you do not need to *re-apply*. The Registrar-General will issue (and send you) first the *interim* certificate and then the *final* certificate as each becomes available.
- If you have *not* already applied for a death certificate (or if you find later that you need more than one original of it) – you may lodge your application directly with the **Births, Deaths and Marriages Office**.

### **How many certificates will I need to apply for?**

Generally speaking, one **certified copy** should be sufficient (for copying or sending it to various agencies, > see above, *Originals, copies & registered mail*).

## 2 GETTING ASSISTANCE & DEALING WITH AGENCIES

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### 1 ASKING FOR HELP

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You may wish to ask friends or family members to assist you with phone inquiries and paperwork, or to accompany you to agencies. You may need an *interpreter*, or *assistance* or *moral support* in making phone calls, writing letters, dealing with agencies, or help with child care or transport.

If you feel you need help, contact one of the relevant agencies listed in *Booklet 8* – for example, a community service (including one of the agencies that uses volunteer help), an interpreting service.

### 2 HELPING YOURSELF

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- **Go gently with yourself.** Take one step at a time, one day at a time.
- Give yourself time out – time to grieve, time for rest, relaxation, physical activities, distractions, being with people.
- Break up big tasks into smaller tasks. Reward yourself when you have completed a task.
- If possible, **avoid making major decisions** for at least one year, preferably a year and a half – for example, moving house, changing jobs, making other major financial decisions. (On a personal level, this might involve decisions on finding a new partner, deciding to have another child.) Give your mind and your body time to adjust. Any change is a source of stress. Undergoing intense stress or many different stresses in a short period of time can put your health at risk.
- Take your time in dealing with the personal belongings of the person who died. Some well-meaning persons may advise you to discard or give things away; you may regret this later on. You will be able to make your own decisions when you are ready, in your own time.
- It is not going to be easy to handle all of the things you will need to do. Grieving may leave you with little energy for daily life, much less for paperwork and problems. Sometimes you may feel overwhelmed or frustrated. Don't give up!
- **If you feel you need help, ask!** *Some notifications have important time limits or important financial consequences.*
- Some matters may take a long time to finalise. Try and be patient.
- Making notifications and handling paperwork concerning the person's death are not purely administrative matters; they can be distressing reminders, stirring up painful feelings and memories. Be prepared for this. Share your feelings with a friend. Think of seeking out a self-help group where you can talk with other people who have been through the same experience, or seek out bereavement counselling.

### 3 DEALING WITH AGENCIES

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- You are a newly bereaved person. Most other people will not be aware of this; they may be taken unawares when realising what your situation is and may be unsure of how to react. This can be distressing for you.
- When you have to deal with an agency in a matter concerning the person's death, it may be best to do this *by phone and by mail* rather than in person.
- Before calling an agency, check your documents and write down your questions. Rehearse your questions if necessary.
- Telephone to make inquiries and to ask for written information and forms to be mailed to you. (If the agency has a general inquiries number, be prepared for long delays in some instances. Note down the service options 'menu' for future reference.) Note down the name of the person you are dealing with. Ask for their direct phone number for future contacts.
- Some agencies may ask you to go into their office to fill in a form; this is not usually necessary. Explain your circumstances. If you must go in person, state that you wish to make an appointment, preferably with the supervisor or manager. Ask what information or documents you will need to bring along. Ask a friend or family member to go with you.
- Don't believe everything you are told. Sometimes persons may not be fully informed of a complex subject and can only tell you what corresponds to their own incomplete understanding of things. Sometimes persons may give you information or interpretations that suit their convenience or their organisation's interests.
- If you are not fully satisfied with information given to you, or if you still have unanswered questions, ask to speak to the supervisor or the manager, or seek out information and advice from different sources. Many of the matters you may have to deal with are highly specialised, and you are likely to need *specialist* advice for *each* area.

#### **Document your contacts.**

- Use a bound notebook, for example, and manilla folders.
- Keep a diary of notifications, documents, decisions, requests, actions, etc. Make notes of all conversations and write down the date, time, organisation, name and phone number of the person you dealt with and what was said.
- Where relevant, confirm a conversation in writing by sending a letter to the organisation.
- Keep a copy of all correspondence you send and receive.
- Keep a copy of all documents you hand to an organisation and of all documents you hand to your solicitor.

## 4 LEGAL MATTERS

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### Will I need legal or other specialist advice and information?

Yes. It may be in your interest to seek legal advice (or other specialist advice or information) promptly about issues such as:

- personal injury compensation
- insurance
- preparing for the inquest (hearing)
- criminal charges (for example, negligent driving)
- the will or intestacy (whichever applies in your circumstances).

Each of these matters is a highly specialised legal area; specialists who deal on a daily basis with these matters will have experience and knowledge of the law, procedures and possible problems.

You have been ‘thrown into the deep end’ and you may be disadvantaged if you do not have legal advice.

### Seek recommendations to specialist advice

It is in your interest to seek out *specialist advice* for each area of relevance to your circumstances. At the very least, seek out a free legal consultation (> see below).

If you already have a solicitor, ask for names of relevant specialists; if not, ask around (friends, family, community agencies) or call the Law Society. Ask for names of several solicitors and their experience.

NOTE: In certain areas that may be of relevance, specialist information may also be obtained from persons who are not necessarily legal practitioners (e.g. Public Trustee trust officers) but who may be as knowledgeable and capable as their legally qualified counterparts.

### Consulting a solicitor

Ask what expertise the solicitor has in the particular area of law concerned – specialist areas? how many years working in this area? types of cases? similar cases dealt with? types of clients? (individuals? organisations? plaintiffs? defendants?) etc. (Experience in family law or in conveyancing real estate, for example, is of little relevance to insurance law or inquests.)

Ask how they would charge for their work and what the total charges might be. Ask for a brief explanation of the relevant law, their opinion on your case, issues involved, etc.

You could have a short, free legal advice session or a first free consultation (> see below). Or you could consult a solicitor for information and advice in the first instance and pay their hourly rate for that advice; you can then decide what other services you may want them to undertake. This might range from helping you to

write a letter to negotiating on your behalf with an insurer, taking court action and representing you in court.

> See also *Consulting a solicitor on an insurance or compensation matter* in *Chapter 4*.

## Free legal advice

### **LAW SOCIETY OF THE ACT**

The Law Society provides a free legal advice bureau with lawyers. The consultation is for 15 minutes and for general legal information only.

### **LEGAL AID OFFICE (ACT)**

The Legal Aid Office provides a free legal advice bureau with lawyers. The consultation is generally for 30 minutes in the first instance and for general legal information only. In coronial cases, additional time may be available. You may be eligible for legal aid in certain circumstances.

### **PRIVATE LAW FIRMS**

Many local firms of solicitors offer a free first consultation.

### **INSURER OF THE VEHICLE**

Some insurance companies provide a free consultation with a lawyer (or referral to a lawyer in case of conflict of interest between the company and yourself).

## 5 FOR MORE INFORMATION & ADVICE

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> See *Booklet 8* for contact information and further details concerning relevant organisations referred to below.

### Insurance

> See *Insurance complaints schemes* in *Chapter 4*.

### Legal

> See *Free legal advice*, above.

### Government agencies

- **Ombudsman** (if you have problems with a government department or authority – Commonwealth Government, ACT Government, Australian Federal Police, Australian Defence Force)
- **Freedom of information** legislation (where necessary, to obtain the release of documents/information held by a government department or agency).

### Superannuation

- **Australian Taxation Office** (e.g. tax treatment of superannuation payments; lost members register (for assistance in locating unclaimed superannuation benefits))
- **Superannuation Complaints Tribunal** (e.g. problems concerning payment of a death benefit – time limits apply)

- **Life Insurance Complaints Service** (for complaints about any dealings with a life insurance company concerning a life insurance or personal superannuation policy)
  - Your bank manager may also be able to advise you on where to seek information or assistance.
- > See also *Chapter 10*.

## Financial, consumer & other matters

- **Community Information and Referral Service of the ACT** (ex-Citizens Advice Bureau) (general information and referral)
- **ACT Consumer Affairs Bureau** (general information and referral, consumer issues, insurance, etc.)
- **CARE Financial Counselling and Legal Service** (financial management, budgeting, debts, etc.)
- **Welfare Rights and Legal Centre** (Centrelink payments, tenancy, consumer credit)
- **Financial Counsellors' Association** in each State or Territory (CARE is the ACT contact).

## Tax

**Australian Taxation Office** (for questions on tax matters, including superannuation (contact the relevant specialist section or use 'A Fax from Tax') or assistance from trained volunteers in completing straightforward income tax returns).

## Publications

> See *Booklet 6* for some relevant sources of information.

## 3 FINANCIAL ASSISTANCE: AN OVERVIEW

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### 1 CHECKLIST: POSSIBLE SOURCES OF FINANCIAL ASSISTANCE, COMPENSATION OR OTHER PAYMENTS

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You may be entitled to financial assistance, compensation, insurance or superannuation payments from a number of sources. Check your family papers and make inquiries of employers, funds, banks, insurance companies and other relevant agencies.

Below are some possible sources of financial assistance or compensation for which you may be eligible, depending on your individual circumstances. (For possible sources of financial assistance for the *funeral*, > see *Booklet 2*.)

#### Insurance policies

Check any insurance policies you may have:

- motor vehicle insurance
- life insurance
- sickness and accident insurance
- death and disability insurance.

#### Compensation

You and your dependants may be entitled to receive compensation following the death of a spouse or other relative in a motor vehicle accident. Compensation may be available from:

- **Compulsory Third Party** insurance scheme (CTP) (motor vehicle accidents)
- **workers' compensation** (if related to work).

#### Centrelink

You may be entitled to receive financial assistance from Centrelink (the statutory authority responsible for what were formerly called social security payments).

If you are already receiving a Centrelink benefit, you can contact a social worker at Centrelink for information and advice.

#### Superannuation

If your family member was or had been employed, check superannuation policies or other arrangements with employers.

## 2 ACCESS TO BANK ACCOUNTS

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### Notifying the bank

As the executor (or next of kin) you will need to notify any financial institution (bank, credit union, building society, etc.) where the person who died held an account (cheque, savings, term deposit, credit card, cash management trust, etc.). It is wise to specifically ask the bank to cancel direct debits, if relevant.

### Freezing of sole accounts

Once you have notified the financial institution of the person's death, it will freeze any *sole account* held in the person's name. Funds held in the account become part of the deceased estate and, generally speaking, cannot be released until the estate has been settled. Depending on circumstances, this can take several months or more.

What has just been said applies to *sole accounts*, not to *joint accounts* (either to sign). You are legally entitled to operate a joint account after the death of the other joint holder; *joint accounts cannot be frozen*.

### Release of funds for funeral expenses

Financial institutions are responsible to see that money held in an account is paid out only with proper authority. They will generally release funds from a frozen sole account to pay for funeral expenses (and possibly for payment of other bills or even to pay out the whole balance to close the account). This is entirely at the discretion of the bank.

### How to go about it

- Call (or ask a relative or friend to call) your bank to ask if it has standard forms to fill out; what documents it requires; whether it will sight originals and make photocopies for its own records.
- You will usually need to present:
  - the funeral account
  - proof of the person's death (for example, the death certificate; some banks may accept a newspaper notice)
  - a will (if applicable).
- Your bank may have a centralised deceased estate section in a capital city to which your branch of the bank may refer you. If not, you may wish to ask for an appointment with the *branch manager* of your bank.
  - > See also *Chapter 11*.

## 4 SOME RELEVANT CORONIAL & OTHER LEGAL MATTERS

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### 1 EVIDENCE CONCERNING THE CAUSE AND CIRCUMSTANCES OF THE DEATH

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#### Access to evidence in coroner's file & representation at coronial hearing

The brief (or file) of evidence gathered by the police concerning the cause and circumstances of the death will be given to the coroner and presented at the coronial hearing. Any person or organisation with a sufficient interest in the inquest into the death (this might include you and any relevant insurer(s)) may ask the coroner for access to this evidence (section 51, *Coroners Act 1997* (ACT)).

Such persons (or organisations) may also seek leave to appear or be legally represented at the coronial hearing (section 42, *Coroners Act*). In some cases, these persons or organisations will be legally represented at the hearing; you should find out if this is the case and seek legal advice (> see *Booklet 4* for more information about the coronial hearing).

#### Related matters outside coroner's jurisdiction

##### **Importance of evidence for insurance claims & other related matters**

The evidence contained in the coroner's brief and that given during the coronial hearing, and the coroner's findings concerning the cause and manner of death, may be important for matters lying outside the jurisdiction of the Coroner's Court. This includes such matters as claims on insurance policies (including life insurance and motor vehicle insurance policies), other claims concerning liability for damage to property or for personal injury or death, etc. and disputes between parties arising from these claims.

If you make a claim against an insurance policy, the insurer will take coronial evidence and findings into account in assessing the claim and determining liability or whether exclusions in the policy apply (> see also below). Similar considerations would apply if an insurer or other party makes a claim against you (or the deceased estate) for liability for damage to property or for personal injury or death.

##### **Possible related proceedings**

If one of the parties takes the case to court, the coroner's findings will not, however, determine any findings made by other courts in related proceedings. Other courts will consider the evidence afresh.

## Supporting documents in relation to insurance claims

### **Documents commonly required**

The chart, *Examples of documents needed for certain purposes*, in *Chapter 1* sets out documents commonly required for settlement of certain insurance claims. Such documents may include:

- various items of evidence that are part of the coroner's brief (e.g. police report, post-mortem report (including the toxicology report concerning the presence or absence of alcohol or other drugs), witness statements)
- coroner's findings (or coroner's report) (based on the evidence mentioned above and other evidence)
- death certificate *with* cause of death (as determined by the coroner, usually at the conclusion of the coronial hearing) (> see also *Chapter 1*).

In some cases the insurer will request documents directly from the police or the coroner.

### **LIFE INSURANCE**

In the case of a claim against a life insurance policy, the insurer will generally require the death certificate *with* cause of death and may also require the coroner's report.

### **MOTOR VEHICLE INSURANCE**

In the case of a claim against a motor vehicle insurance policy, the insurer may require the police report, the coroner's report, the toxicology report and witness statements.

### **Common exclusions in insurance policies**

Such documents are generally required by insurers in order to determine whether an exclusion in the insurance policy applies or not (or, if relevant, to determine liability). Common exclusions include suicide and, in the case of motor vehicle insurance, circumstances where the driver was under the influence of drugs or alcohol (which would be shown in the toxicology report of the post-mortem report).

### Probable delays

#### **Delays in determining cause and circumstances of death, availability of documents and settlement of insurance claims**

Certain insurance claims may not be completely processed, much less settled, until the cause and circumstances of the death have been established by the coroner – usually at the conclusion of the coronial hearing (often some three months or more after the death).

However, you can and should notify the insurer of the person's death immediately and lodge your initial claim now; supporting documentation can be

supplied later. The insurer will advise you as to which documents are required so that the claim can be properly considered.

### **Documents that may be available before coronial hearing or before finalisation of criminal proceedings**

As well, in certain circumstances, and if delays are causing financial hardship to you or your family, you could ask the insurer if it will accept the *post-mortem report*, so that the claim can be paid sooner, or ask the coroner to issue an *interim finding* so that a *death certificate with cause of death* can be issued.

#### **POST-MORTEM REPORT**

A full post-mortem report including the toxicology report may take several months to complete and may not be available until shortly before the coronial hearing.

#### **REQUEST FOR CORONER'S INTERIM FINDING**

In certain circumstances, the immediate family could ask the coroner to issue an *interim finding* (section 53, Coroners Act). This might be possible if the coronial hearing is considerably delayed or if the coroner's inquest is adjourned while *criminal charges* are dealt with.

#### **DEATH CERTIFICATE WITH CAUSE OF DEATH**

If the coroner is able to issue an interim finding, he or she will advise the Registrar-General, who will then be able to issue a certified copy of the death certificate *with cause of death* (*before* the coronial hearing or *before criminal proceedings* are finalised, if relevant).

## 2 GETTING INFORMATION & ADVICE ON INSURANCE & COMPENSATION MATTERS

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### Insurance complaints schemes

If you have a disputed claim with an insurer, there may be circumstances where it is in your interests to deal with it through an insurance complaints scheme in the first instance. If you were unsuccessful, you could then consider engaging the services of a solicitor to pursue your case.

### **General Insurance Enquiries & Complaints Scheme**

- **Participating types of insurance:** motor vehicle, home building, home and contents, sickness and accident, consumer credit, travel.

All insurers are required by the industry code of practice to review their decision internally upon request. If the matter is then not resolved to your satisfaction, you may approach Insurance Enquiries and Complaints Ltd (IEC), whose decision will be binding upon the insurer but not upon you.

- **Non-participating types of insurance:** compulsory third party, workers' compensation, life insurance, superannuation, professional indemnity, health.

## Life Insurance Complaints Service

For complaints about any dealings with a life insurance company concerning a life insurance or personal superannuation policy

For more information on these schemes, > see also *Booklet 8*.

## Consulting a solicitor on an insurance or compensation matter

### Advantages

In dealing with an insurer, you will be in a weaker negotiating position unless you happen to be very well informed. Insurance companies have solicitors; you, too, should have access to legal information and advice. Specialist solicitors will have knowledge of legal procedures, of your legal entitlements and of what amount you might reasonably expect to be awarded on the basis of their knowledge of similar cases and circumstances.

### Cost

You should have a clear agreement concerning the solicitor's charges and the basis on which they are calculated (hourly rate? retainer? set fee? fee for each type of activity carried out?).

Ask if the solicitor will provide you with an itemised statement of their fees and disbursements (> see below) and copies of all relevant correspondence or settlement offers. Ask what are the charges for this.

Ask what happens if your case goes to court:

- if your case is successful – what legal expenses will you have to pay?
- if your case is *not* successful – will you have to pay not only your own solicitor's fees and disbursements but also the 'costs' of the other party? (> see below).

### Legal costs

There are several key words and phrases used by lawyers and the courts to describe the expenses in legal advice and litigation:

- **'disbursement'**: includes out-of-pocket expenses incurred on your behalf such as court filing fees, medical reports, other reports such as an accident investigator report, photocopying, communication costs for use of phone, fax, mail and e-mail. It sometimes includes 'counsel's fees'.
- **'counsel's fees'**: what the barrister charges for advice (spoken and written), conferences (with you, your solicitor, other witnesses), drafting of court and other documents, and for appearing in court.
- **'solicitor-client costs'**: what your solicitor can reasonably charge you for any professional work done on your behalf. This includes meeting with you, your experts, other witnesses; writing letters, reports and other documents; telephone calls; research; assisting your barrister, etc.

- **‘party-party costs’**: what a court will require the losing side to contribute to the payment by the winner of the winner’s legal costs. Note that the loser is only paying part of the legal expenses incurred by the winning party.
- **‘punt’ or ‘spec’**: some lawyers (solicitors and barristers) will take a case on a **‘no win, no pay’** basis. This means that if you win then they will charge a fee for their professional advice and service, but if you lose then they will not charge you any professional fee. However, you must remember that you will have to pay the ‘disbursements’ whether you win or lose. Also, if you lose, you will have to pay the ‘party-party’ legal costs of the winning party.

### **What usually happens?**

A solicitor can assess your circumstances, give you information, negotiate on your behalf with the insurer, file for court action and represent you in court (or get a barrister to do so).

If you are making a claim, the solicitor will write a ‘letter of demand’ to the insurer. Often you (represented by the solicitor) will start court proceedings against the insurer for the money you are claiming.

In most cases, the insurer will offer to settle the case before it goes to court. Your solicitor should advise you on whether the amount offered is a reasonable one – i.e. more or less what a court might award you in similar circumstances but taking into account the fact that the expense of a court case would be saved. The insurer’s offer of settlement may be based on similar calculations.

It is often in everyone’s interest to settle out of court. Court cases are expensive for both parties. A ‘settlement conference’ may then be arranged; you may accept the offer or attempt to negotiate a higher offer.

If an agreement is reached by negotiation, the case is ‘settled out of court’. In this case you would be asked to sign a ‘release’; this releases the other party from any future claims by you in this matter. As well, the settlement may be approved by the relevant court.

Similar principles apply if an insurer or other party has a claim against you for damages.

> See also *Legal matters* in *Chapter 2*.

# 5 COMPULSORY THIRD PARTY INSURANCE SCHEME

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NOTE: This chapter deals with compulsory third party insurance in relation to *death or injury* resulting from a motor vehicle accident. (For information about damage to *property* (including a motor vehicle) resulting from a motor vehicle accident, > see *Chapter 7*.)

It is advisable to seek legal advice promptly (> see below, *What steps should I take now?*), and to consult a doctor as soon as possible if you may have suffered injuries, either physical or psychological.

The following sections deal with circumstances where the accident occurred *in the ACT only*. (If the accident happened *outside the ACT*, > see below, *What if the accident took place interstate?*)

## 1 WHAT IS CTP?

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- The Compulsory Third Party insurance scheme (CTP) in the ACT is a compulsory insurance scheme paid for by motor vehicle owners with their annual motor vehicle registration fee.
- CTP provides insurance cover for owners and drivers of registered vehicles who cause **injury or death** to other road users, including pedestrians. Generally speaking, it pays compensation to **third parties** (persons other than the driver) who have suffered as a result of a motor vehicle accident.

## 2 IS IT A 'NO-FAULT' SCHEME?

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No. In the ACT, the negligence (fault) or liability of a driver must be proven before compensation can be paid. (This is unlike the 'no-fault' scheme operating in Victoria, for example.)

### Fault by both drivers

More than one driver may be at fault. If the family member who died was partly at fault, you may still be able to claim compensation. In general, the CTP insurer will determine the proportion of fault, and compensation will be awarded accordingly between the two parties involved. If the parties involved cannot agree on the proportion of fault, and if the case goes to court, the court will decide (Magistrates Court or Supreme Court, depending on the amount claimed).

### If you're not sure who was at fault

You may not know who was at fault; if so, you should consider seeking legal advice. > See also *Chapter 2* and *Chapter 4*.

### 3 WHAT VEHICLES ARE COVERED?

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The CTP scheme applies to all motor vehicles registered in the ACT that are at fault in an accident, other than some government-owned vehicles.

#### What about government vehicles?

The ACT Government and Commonwealth Government are self-insurers for some vehicles – for example, buses and government cars – and are liable for death or injury caused by the negligence of a driver of a government vehicle.

#### What about vehicles registered interstate?

If the accident occurred in the ACT, the ACT law applies even if the vehicle at fault was registered in another State.

#### What if the vehicle at fault was not registered or not identified?

You can still claim for compensation even if:

- the other vehicle wasn't registered; or
- the other driver or vehicle cannot be identified.

In these circumstances, claims are made against the **nominal defendant** (> see also below, *Time limits*).

### 4 POSSIBLE LIABILITIES OF DRIVER AT FAULT

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#### If the vehicle was registered

As long as the vehicle was registered (and therefore insured for CTP), the driver at fault (or his or her estate) is covered by the CTP scheme, which will not seek to recover any money paid out for personal injury or death caused to another person.

#### If the vehicle was not registered

If the vehicle was not registered, the nominal defendant (the CTP insurer) may seek to recover money from the driver and/or owner of the vehicle at fault (or his or her estate) through the courts.

### 5 WHAT COMPENSATION CAN BE CLAIMED?

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The following section is intended to give you a general idea of what sorts of compensation can be claimed in certain circumstances. This is a complex area, and you should seek legal advice.

The ACT is covered by *common law*. There is currently no upper limit on the compensation amount that can be paid.

## Compensation to relatives (for the *death* of a family member)

An immediate family member can claim for:

- **economic loss** (loss of financial benefits that the deceased would have provided if he or she had lived) – **if they were dependent** on the family member who died
- cost of reasonable **funeral expenses**
- **compassionate travel** expenses for family members – **in some circumstances**

as a result of the death of a family member in the accident.

Only one action is usually brought on behalf of all family members and the compensation is awarded proportionally between all those entitled to claim.

### **Who can or cannot claim?**

Surviving family members of a person killed in a motor vehicle accident can claim compensation if the person was killed due to the negligence in whole or in part of another person. If the person killed was solely responsible for the accident, with no other person at fault, a claim by family members would be unlikely to succeed. In effect, a claim by a family member will be possible in circumstances where the deceased could have brought a claim, had they survived the accident. As the ACT operates a fault-based system, a claim can be brought if the accident was caused by someone else, but a claim cannot be brought by the person who caused the accident.

## Compensation for *injury*

### **What is injury?**

‘Injury’ may include not only physical injuries and ongoing symptoms and disabilities but also mental or psychological injuries, symptoms and disabilities.

### **What about nervous shock?**

Nervous shock (or post traumatic stress disorder) can be claimed in certain circumstances. It must have been diagnosed by a qualified medical practitioner and have arisen as a result of an accident involving a close family member or friend. You cannot claim for what is considered to be a normal grief reaction.

### **What compensation can be claimed?**

Compensation for injury suffered in the accident or as a result of the accident may include:

- general damages (‘non-economic loss’ for pain and suffering and loss of enjoyment of life, as evidenced by your injuries, symptoms and disabilities)
- treatment and other out-of-pocket expenses, past and future (e.g. medical, hospital, rehabilitation, aids and equipment, counselling, travel for medical treatment)

- loss of income or earning capacity – past and future
- home care services (domestic help, personal care) (from relatives, friends, neighbours, whether paid or unpaid)
- a portion of legal costs (> see *Chapter 4*).

Interest may be payable on some of the components of compensation.

### **What if I was at fault in some way?**

Compensation may be reduced in certain circumstances if the injured person was at fault ('contributory negligence'). (For example, in the case of a driver *or* passenger – not wearing a seat belt, being under the influence of alcohol or drugs; in the case of a driver – speeding or unsafe driving.)

### **Who can or cannot claim?**

You have a claim if you have suffered an injury arising from a motor vehicle accident as a result of the negligence, in whole or in part, of some other person.

This means that, in certain circumstances, you may be able to claim if you suffered nervous shock – even though you were not physically injured in the accident or not present at the accident. This is a complex area, and you should seek legal advice.

## **6 TIME LIMITS**

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There is currently no maximum period for notifying the CTP insurer of the accident or for lodging a claim (except where the nominal defendant is involved; > see immediately below); however, a **six-year limitation** for commencing court proceedings applies.

### **Nominal defendant claims**

Nominal defendant claims (those where the other driver was not identified or the other vehicle was unregistered) are lodged in the same way, but a strict time limit applies.

- Ask the police and the nominal defendant if this applies in your case.
- You must notify the nominal defendant of your intention to make a claim **within three months of the accident**. You may need to do this **before the inquest** (hearing) is held, if relevant.
- If the other driver was unidentified, you must also make an effort to identify or find the other driver by advertising for witnesses in the newspaper or by following up any possible leads. Seek legal advice.

## 7 WHAT STEPS SHOULD I TAKE NOW?

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### Seek legal advice promptly

A solicitor can give you information and advice, and negotiate with the CTP insurer on your behalf, where appropriate.

Many law firms will provide a free initial consultation and will handle personal injury claims on a 'no win-no fee' basis (> see *Chapters 2 and 4*).

Seek specialist legal advice **promptly**, especially if:

- you are unsure about what is involved or what to do
- you are unsure who the driver at fault was
- the **nominal defendant** may be involved
- the accident occurred in **NSW** (> see below).

Court proceedings may be necessary if a settlement is not possible, and you would probably need a solicitor to represent you.

### Lodging your claim

You can lodge your claim either through your solicitor, who will write a letter of demand to the insurer, or directly with the CTP insurer (or the relevant government body if the other vehicle was a government vehicle).

You can obtain a claim form from the CTP insurer. (The claim forms (Compensation to Relatives or Personal Injury claim forms) will give you an idea of the documentation you will need to assemble; > see also below.)

## 8 NEXT STEPS

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### Documenting your claim

You do not have to provide full documentation before lodging a claim. Once your claim has been lodged, you (or your solicitor) will be asked to provide further particulars concerning your claim as they become available.

(If you are represented by a solicitor, all correspondence from the CTP insurer will be sent to your solicitor. You should keep in touch with your solicitor concerning the progress of your claim.)

If you think you might be eligible for compensation, start now to document your claim. You (or your solicitor) will need to assemble evidence concerning:

- the circumstances of the accident (> see also *Chapter 4*)
- the loss, expenses or injuries you are claiming compensation for (e.g. lost earnings, expenses incurred, injuries or symptoms suffered, medical or other treatment received, assistance received from relatives, neighbours, friends, etc.).

Keep a diary of your experiences or symptoms in relation to any injury, pain and suffering or nervous shock that you may claim for.

## Assessment

The CTP insurer will require the above information in order to assess your entitlements to damages.

If you were injured (physically and/or psychologically), the CTP insurer (and your solicitor, if relevant) may require you to undergo medical and rehabilitational assessment. It is very important to be frank and truthful in answering questions put by medical examiners.

## Settling your claim

**Do not settle your claim too quickly or without having sought legal advice.**

Under ACT law, the compensation paid is a **once-only payment**. In case of injury (physical or other), you should not settle until your medical condition has stabilised.

## 9 WHAT IF THE ACCIDENT TOOK PLACE INTERSTATE?

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There are different laws and different time limits for claiming compensation in different States.

Where *both* vehicles are registered interstate *and* the accident occurs interstate, different CTP schemes may apply, though it still may be possible to bring a claim in the ACT in certain circumstances.

Seek legal advice promptly.

### NSW

NSW has strict time limits: **one month** in which to report the accident to the police, in writing, and **six months** in which to lodge a claim with the CTP scheme. There is a **three-year limitation period** for commencing court proceedings.

NSW compensation is covered by *statute*. It has an upper limit for pain and suffering compensation and a threshold before obtaining this.

## 6 WORKERS' COMPENSATION

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### 1 WHAT IS WORKERS' COMPENSATION?

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If your family member died while driving a motor vehicle to or from work or during the course of their employment, you may be able to claim workers' compensation benefits.

Unlike the Compulsory Third Party insurance scheme (CTP) (> see *Chapter 5*), workers' compensation is a **no-fault system**. This means that, depending on eligibility, benefits would be paid no matter who was at fault in the accident.

For people working in the ACT, benefits may be available under one of two Acts, depending on whether the employer is in the private or public sector.

#### Private-sector employees

The *Workers' Compensation Act 1951* (ACT) covers employees of private organisations. The amount of benefit paid depends on whether the family members were wholly or partially dependent on the person who died (or was injured):

- If a person is *wholly* dependent on the deceased (or injured) worker, then the maximum amount may apply.
- If *partial* dependency is claimed, only the *funeral expenses* may be paid.

For more information, contact **ACT WorkCover**.

#### Public-sector employees

The *Safety, Rehabilitation and Compensation Act 1988* (Commonwealth) covers employees of the ACT Government, Commonwealth Government (including licensed authorities, i.e. Australia Post, Telstra, Reserve Bank of Australia, Australian Defence Industries Ltd) and members of the Australian Defence Forces.

Compensation may be payable under this Act if a person dies:

- as a result of an injury at work or an accident while travelling to or from work
- as a consequence of a disease or aggravation of a disease for which liability is accepted under this Act.

The benefits available under this Act are:

- lump-sum payments to dependants of a deceased employee
- weekly payments for dependent children of the deceased
- funeral expenses.

Under the Act, there are limits on the amounts that can be paid for each of these benefits. For more information, contact **Comcare**.

## 2 WHAT STEPS SHOULD I TAKE?

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### Seek legal advice

It is a good idea to ask a solicitor for advice concerning, for example, the possible recovery by the workers' compensation scheme of payments from the CTP scheme.

If you are claiming compensation under both the CTP scheme and the workers' compensation scheme, workers' compensation may recover from CTP any benefits you have already been paid.

### Lodge a claim

Ask the employer of the person who died (or your solicitor) to assist you. You will need to:

- fill out a claim form
- supply a copy of the death certificate
- lodge these with the employer, who will forward them on to the insurer.

# 7 MOTOR VEHICLE INSURANCE

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NOTE: This chapter concerns *damage to property* only (i.e. damage covered by third party and comprehensive insurance policies). For information about *personal injury* claims, > see *Chapters 5* and *6*.

Terms used in this chapter: ‘your vehicle’ refers to the vehicle owned or driven by you or your family member, and ‘your insurer’ refers to the insurer of that vehicle.

Some insurers or motoring clubs offer various forms of **immediate assistance** (> see *Booklet 2*).

## 1 TYPES OF POLICIES

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### Third party insurance

#### **Third party property insurance**

##### **BASIC COVER**

Third party property insurance (also termed the basic cover) covers damage to *someone else’s property* caused by your vehicle. This includes, for example, damage to other vehicle(s) involved and government-owned property such as light poles, traffic lights and road signs.

##### **UNINSURED MOTORIST EXTENSION**

Some insurance policies may also offer an ‘uninsured motorist extension’. This offers limited coverage for the cost of repairs to *your vehicle* arising out of a collision in which the driver of your vehicle is not at fault and the other vehicle is not insured (subject to the identification of the other driver).

#### **Third party fire and theft insurance**

Third party fire and theft insurance is similar to third party property insurance but extends to cover loss or damage caused to *your vehicle* by fire, theft or attempted theft.

### Comprehensive insurance

Comprehensive insurance covers:

- damage to *your vehicle* (repairs, or replacement or cash settlement if it is written off), to the insured value of the vehicle;
- loss of, or damage caused to, *your vehicle* by fire, theft or attempted theft; *and*
- damage to *someone else’s* (third party) *property*.

Additional benefits may include a **death benefit**, coverage of **towing costs** and **personal belongings** lost or damaged in the vehicle, etc. Check your policy.

## 2 WHAT STEPS SHOULD I TAKE NOW?

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- Check your insurance policies.
- **Report the accident as soon as possible to your insurer(s) by telephone – even if you don't make a claim.** Keep a note of who you spoke to and when you called in case you do decide to claim later.
- When you are ready to **make a claim**, you can usually claim by telephone. (For your own records, you should make a diary entry of your conversation.) Most major insurers do not require that you complete a claim form; the insurer will record the details electronically and mail them to you for confirmation. You should check that the details are correct when received.
- If you need more information or advice, speak to your insurer, seek legal advice or contact Insurance Enquiries and Complaints Ltd.
- Make a photocopy of any documents or correspondence you send to the insurer or to anyone else in relation to the accident.
- Notify your insurer immediately of any claim made against you by another person. Your insurer reserves the right to defend you for a claim made against you for loss or damage.

## 3 NEXT STEPS

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### Assessment of damage

If you have comprehensive insurance coverage and have lodged a claim, your insurer will arrange for an assessor to assess any damage done to your vehicle. If another motor vehicle was involved, your insurer may wish to assess the other vehicle as well.

NOTE: This may not be a complete mechanical examination of the vehicle(s). But with a view to establishing the circumstances of the accident, you may also wish to arrange an examination of your vehicle (in addition to that carried out by the police accident investigators); > see *Booklet 1*.

### Evidence concerning the accident

> See *Chapter 4*.

## 4 SOME COMMON EXCLUSIONS

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The insurer may not have to pay a claim because of an exclusion in the insurance policy – if, for example:

- the driver was under the influence of alcohol or drugs
  - the driver was unlicensed
  - the motor vehicle was being driven in an unsafe or unroadworthy condition or being used for illegal purposes
  - the driver committed an intentionally negligent act
-

- there was dishonesty in making the claim
  - the accident was part of a race.
- Refer to your policy for exclusions specific to the policy.

## 5 SOME COMMON SCENARIOS

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### Damage to your vehicle

#### 1. **Your vehicle was covered by comprehensive insurance and no exclusions apply**

Your insurer will normally pay your claim (for repairs to, or replacement of, your vehicle). You may have to pay the excess on your policy, depending on circumstances (i.e. whether the other driver was at fault and can be identified, etc.).

If another driver was involved and you were not at fault:

- The excess on your policy may be waived and/or there will be no loss of a ‘no-claim bonus’.
- Your insurer may try to recover the amount of your claim from the other driver (or the other driver’s insurer). You may need to assist your insurer by giving evidence in court; the insurer would contact you about this, if necessary.

#### 2. **Your vehicle was covered by comprehensive insurance but exclusions apply**

Your insurer may refuse your claim. If another driver was involved (and if that driver had third party property insurance and if you were not at fault), you may attempt to make a claim against the insurer of that driver. If the other driver was not insured, you may need to take court action against the driver.

#### 3. **Your vehicle was not covered by comprehensive insurance**

If you did not have your own comprehensive insurance coverage for damage caused to your vehicle, you would have no claim unless someone else was at fault:

- If another driver was at fault and had third party property insurance, you may attempt to make a claim against the insurer of that driver.
- If the other driver was at fault and was not insured:
  - You may be eligible for limited cover from your insurer if you had third party property insurance coverage with an ‘uninsured motorist extension’ (> see above). Check your policy.
  - You may need to take court action against the driver.

NOTE: If you are insured but intend to take your own legal action against the driver at fault for the damage caused to your vehicle, you must first notify your insurer.

## Damage caused by your vehicle

The other parties involved (or their insurers) may seek to recover their costs of property damage caused by you or your vehicle. They may make a claim for damage against your insurer, or against you (if you were the co-owner or co-insured) or against the deceased estate (if the driver at fault is the person who died). You must notify your insurer immediately if you receive a demand for payment.

### **4. Your vehicle was covered by third party property insurance and *no exclusions* apply**

Your insurer should normally pay the claim made for damage to other people's property. Usually you will have to pay the excess on your policy, and any no-claim bonus may be lost.

### **5. Your vehicle was covered by third party property insurance but *exclusions* apply**

Your insurer may refuse the claim.

### **6. Your vehicle was *not covered* by third party property insurance**

The claim may be made against you (or the deceased estate).

## 6 FOR MORE INFORMATION & ADVICE

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> See *Chapters 2 and 4*, and *Booklets 6 and 8*.

## 8 OTHER TYPES OF INSURANCE

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### 1 TYPES OF POLICIES

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#### Life insurance

Common exclusions in life insurance policies provide that the policy may be refused if, for example, a terminal illness was not disclosed when the policy began or if the death was a suicide within the first 13 months of taking out the policy.

#### Death and disability insurance

If the claim is for disability and not for death: as with Compulsory Third Party insurance compensation claims (> see *Chapter 5*), you should not accept a payout until the condition of the injured person is stable. Seek legal advice.

#### Home contents insurance

Home contents insurance may cover damage to (or loss of) personal belongings (handbags, luggage, jewellery, clothing, etc.) that were damaged (or lost) as a result of the accident, subject to payment of the excess in the policy and subject to any exclusions.

Check your **motor vehicle insurance** policy as well; some items may be covered under additional benefits.

### 2 DOCUMENTING YOUR CLAIM

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#### Death

A copy of the death certificate showing the cause of death will usually be required for life insurance or death insurance; sometimes the coroner's report may also be required. This is likely to involve delays in settlement of your claim. Other documents may also be required (> see also *Examples of documents needed for certain purposes* in *Chapter 1*, and *Chapter 4*).

#### Disability

The insurer will require detailed medical reports on the condition of the injured person and will probably want the injured person to see doctors and specialists chosen by the insurer.

### 3 WHAT STEPS SHOULD I TAKE?

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- Search for any insurance policies you may have (including policies with organisations such as your bank, private health insurance fund, employer(s), professional organisation, etc.) and check the policies.
- Contact the insurer and ask what forms and documents are necessary to lodge your claim. You may be able to lodge your claim by telephone. (Some insurers

may not require that you complete a claim form; they will record the details electronically. For your own records, you should make a diary entry of your conversation.)

- Complete the form, if relevant, and send any documents that are available now. (It is advisable to make a *photocopy* of original policy documents, have the photocopy certified by a justice of the peace and use *registered* mail.)
- Send other relevant documents as they become available.

## 4 FOR MORE INFORMATION & ADVICE

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> See *Chapters 2 and 4*, and *Booklet 8*.

# 9 CENTRELINK

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## 1 FINANCIAL ASSISTANCE

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Centrelink has a range of benefits that may help you if a family member has died or been injured in an accident.

The payment you may be eligible for depends on your circumstances and who died or suffered injuries. Most payments are subject to **income and assets tests**. (There are separate assets tests for home-owners and non-home-owners.) You might be eligible for maximum payments or for reduced payments, depending on your circumstances – it is certainly worth making an inquiry.

Centrelink payments may be able to assist at a time of financial hardship or uncertainty – for example, if you are on leave from work without pay, or are unable to access funds until the deceased estate has been settled.

### Centrelink payments

Following is an indication of some of the payments for which you might be eligible:

#### **In case of death**

##### **DEATH OF YOUR PARTNER**

- If you and your partner were already receiving a pension or certain other allowances or benefits: you may be eligible for a lump-sum payment, and your payment will change to the single person's rate.
- **Bereavement Allowance** (if you had no dependent children, and neither you nor your partner received a Centrelink payment): a short-term payment (up to 14 weeks in most cases); **should be claimed soon after the person's death**.
- **Widow Allowance** (if you are a woman over 50 and you have not worked recently).

##### **DEATH OF YOUR CHILD**

- You may be eligible for a **Bereavement Payment** – whether or not you were already receiving **Family Allowance**.
- If a child died **soon after birth** or was **stillborn**: you may be eligible for **Maternity Allowance**.

#### **In case of injury**

If a member of your family was injured in the accident, you may be eligible to receive:

- Carer's Pension
- Child Disability Allowance
- Sickness Allowance
- Disability Support Pension.

## Concession cards

Ask Centrelink if you are eligible for:

- Health Care Card
- Pensioner Concession Card
- Commonwealth Seniors Health Card.

What steps should I take?

### **Notify Centrelink if the person who died was receiving assistance or you were receiving assistance**

If the person (adult or child) who died was already receiving a pension or you were receiving a pension or other payment in relation to that person, you need to report the person's death to Centrelink as soon as possible.

### **Get information and advice**

Contact Centrelink to get more information or to arrange an appointment. Ask for an appointment with a social worker. Explain your circumstances and ask which benefits may apply in your circumstances.

## 2 OTHER ASSISTANCE FROM CENTRELINK

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### Social workers

Centrelink provides free access to social workers. Call Centrelink's Appointment line, explain your circumstances and ask to speak with a social worker. The social worker can come to your home if you ask for this. A social worker can provide:

- counselling and support
- information about Centrelink payments and services
- information about community services
- referrals to other sources of support.

At a later stage, you can also discuss options for the future (employment, training, volunteering). An **interpreter** can be arranged, where necessary.

### Information booklet

Centrelink has a range of materials explaining the various forms of assistance available and how to claim. It also publishes a booklet – **'What to do when someone dies'**.

### Financial Information Service

Centrelink provides a Financial Information Service (FIS) that may be helpful for long-term financial planning. Call Centrelink's Pension line and ask to speak to an FIS officer.

### 3 COMPENSATION PAYMENTS & CENTRELINK

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#### If you have applied for compensation

You may have applied for compensation (for example, Compulsory Third Party insurance (> see *Chapter 5*) or workers' compensation (> see *Chapter 6*). You may be receiving Centrelink benefits while waiting for your compensation claim to be settled.

If your claim is successful, you may need to repay some or all of your Centrelink benefit from your compensation settlement. When considering a settlement offer, find out whether it will affect your eligibility for future Centrelink payments.

#### What steps should I take?

You or your solicitor should contact the **Compensation Management Section** of Centrelink to find out:

- how a proposed lump-sum compensation payment can affect a Centrelink payment that you are receiving or that you might apply for
- whether you will have to reimburse Centrelink payments from the compensation payment.

You must inform Centrelink of:

- any compensation payments you receive if you (or your partner) are receiving any Centrelink payments, or if you apply for any in the future
- any change in the rate of regular compensation benefits that you (or your partner) receive.

There are penalties for not doing this.

# 10 SUPERANNUATION

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## 1 WHAT STEPS SHOULD I TAKE?

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Notify the employer or superannuation fund

### **If the person who died was employed at the time of death**

Notify the employer of the person's death. The employer should then notify its superannuation fund of the death. Or you can contact the fund directly to be certain that they are informed quickly.

### **If the person who died was retired or self-employed**

Notify the superannuation fund of the person's death. In the case of a retired Commonwealth public service officer, notify Comsuper.

Lodge an application

The superannuation fund will send you a form to complete and return to them along with other documents (> see also chart in *Chapter 1*).

Next steps

The superannuation fund will make the payment(s) according to the beneficiary(ies) named in the policy or to dependants according to the scheme. Fund trustees in many instances retain the right to allocate death benefits to beneficiaries approved by them. In some cases, payment will be made to the deceased estate. Lump-sum pay-outs to a surviving spouse and/or other dependants such as children are generally tax-free.

## 2 OPTIONAL LIFE INSURANCE

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Some superannuation schemes have optional life insurance attached to the superannuation policy. This will be noted in the superannuation paperwork. If it applies in your circumstances, the insured amount will be paid with the superannuation payment to the beneficiary named in the policy or, if no-one is named, to the deceased estate.

## 3 FOR MORE INFORMATION & ADVICE

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Superannuation is a highly complex area. Situations can vary greatly depending on the circumstances of the person who died.

> See also *For more information & advice* in *Chapter 2*. (NOTE: If lodging a complaint to the Superannuation Complaints Tribunal about **death benefits**, **strict time limits apply**.)

# 11 SETTling THE DECEASED ESTATE

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## 1 ADMINISTERING THE ESTATE

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### What is involved?

Administering an estate:

- carries heavy legal obligations
- may involve complex issues
- may require considerable expertise
- may be very time-consuming
- may involve intra-family tensions.

### **Responsibilities of the person or organisation administering the estate**

Responsibilities will include:

- securing and protecting assets
- determining the assets and liabilities of the estate, obtaining valuations
- obtaining authority to administer the estate (grant of probate or letters of administration), where applicable
- completing income tax returns (may include capital gains tax implications)
- arranging for collection of assets and payment of liabilities (e.g. funeral expenses, tax, debts) and keeping accounts
- distributing the remaining assets according to the provisions of the will or intestacy law.

### First things first

The first steps are to:

1. evaluate your circumstances
2. consider the types of assistance you may need
3. look into the various possible sources of assistance available.

Without authority, a person should do no more than bury the deceased, secure assets and make inquiries – otherwise, they may be deemed to have intermeddled.

**Under no circumstances should you begin to collect estate income or distribute assets without proper authority.**

While waiting for the estate to be settled, you can, however – if you are the executor – distribute to other persons a few small personal items of little monetary value, and begin to document the estate (> see below).

## 1. What are my circumstances?

It is wise to get an overview of the likely complexity of your circumstances early on and not attempt a do-it-yourself approach if your circumstances are complex. This would be an additional heavy burden in circumstances that are already extremely stressful.

### POINTS TO CONSIDER

- grant of administration required? (if no valid will)
- grant of probate required?
- high value and complexity of the estate?
- superannuation involved? (Do you know what an eligible termination payment, an approved deposit fund, a reasonable benefit limit, an annuity, a lump sum are? Do you know what their precise tax treatment is in various circumstances? If not, it may be unwise to attempt to administer the estate by yourself.)
- claims against the estate involved?
- small business involved?
- range of specialist expertise required?
- a lot of time and paperwork required?
- minor beneficiaries involved?
- potential family conflicts? (e.g. more than one marriage? children from previous marriage(s)? de facto relationship?)
- your willingness, your capacities, your available time.

Depending on your circumstances, you may wish to consider appointing a trustee organisation (public or private) to administer the estate on your behalf, or approaching a solicitor for assistance.

If the person who died was a minor child with no assets, the situation is not likely to be a complex one in terms of estate matters. It may still be wise to seek relevant specialist advice (e.g. from a legal practitioner or public or private trust officer).

## 2. What sorts of assistance will I need?

Depending on the complexity of your circumstances, you may need a number of specialised services on highly technical issues – not only expert legal advice but also expertise in accountancy, tax matters, superannuation (and its tax implications), trust and investment issues. If you are intending to administer the estate yourself, you may find it very difficult at some stage to access the full range of expertise you may need.

### POINTS TO CONSIDER

- range of specialist expertise offered?
- quality of advice offered? (Is this what they do full time or is this only a minor component of their work?)
- one-stop shop?

- total costs? (what basis for charging fees or commissions? disbursements? insurance bond necessary?).

### 3. What are my options for assistance?

- Do-it-yourself (you act as executor or administrator) + pay for advice, information or other services from a specialist solicitor (fees usually based on time + scale of fees) + accountant(s) + tax expert(s) (may be difficult to find) + financial adviser(s) + other expert(s).
- You appoint a private trustee company as administrator; usually offers a full range of expertise; charges based on a percentage of the value of the estate or quoted fees.
- You appoint the Public Trustee as administrator; offers a full range of expertise; maximum charges (set by law) based on a percentage of the value of the estate or quoted fees.

You may wish to shop around. You could approach several organisations for an initial consultation. Discuss your circumstances and find out what the organisation's approach would be, what expertise they have at their command, what their estimate of the total costs would be.

#### **PUBLIC TRUSTEE**

The Public Trustee can administer the deceased estate where:

- the Public Trustee has already been named as the executor or co-executor in the will
- a named executor is unwilling or unable to act  
(If you have been named the executor of the will, you are not obliged to take up the appointment; you can appoint the Public Trustee to serve as administrator.)
- there is a will but no named executor
- there is no valid will and the next of kin requests the Public Trustee to serve as administrator or joint administrator
- the Public Trustee is appointed by the court (e.g. family conflicts, or no person is able or willing or available to administer the estate).

## 2 DOCUMENTING THE ESTATE

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Whether you decide to administer the estate yourself or not (> see above), your input will probably be required to assist in documenting the estate's assets and liabilities. You can begin to assemble and organise relevant documentation concerning the following (where relevant):

#### Assets & amounts owed to the estate

- wages/salary, recreation leave, long-service leave, other employment benefits of the deceased
  - bank accounts (cheque, saving, term deposits, etc.)
-

- superannuation
- income tax refunds
- medical claims
- funeral benefits
- final Centrelink pension payment
- insurance policies
- motor vehicle, caravan, boat, trailer
- furniture
- personal effects (jewellery, coins, stamps, books, art works)
- home (property deed), other real estate
- shares, unit trusts, bonds, etc.
- debts owed to the person who died.

### **Note**

- Some insurance or superannuation payments may be payable directly to named beneficiaries; in this case, they will not form part of the estate.
- If property is held in joint tenancy, it will become the property of the surviving partner, not part of the estate.

### **Liabilities (amounts owed by the estate)**

Check any amounts owing, e.g.:

- funeral expenses (funeral, burial or cremation, memorial)
- purchase or rental of home (mortgage papers, home loan; lease), motor vehicle, furniture, appliances
- personal loans
- credit cards
- hire-purchase agreements
- overdraft
- guarantees
- income tax
- rates, etc.
- other debts.

> See also *Personal financial management* in *Chapter 1*.

### **Claims against the estate**

Surviving family members are not personally responsible for any liabilities of the person who died. However, any successful claim against the estate will reduce the funds available to be distributed to surviving family members.

This may include claims made in relation to the accident in relation to motor vehicle insurance (> see *Chapter 7*) or Compulsory Third Party insurance (> see *Chapter 5*).

## Debts (including loans)

Surviving family members are not personally responsible for any debts of the person who died unless:

- the debts are in *joint* names with them; or
- they have acted as *guarantor* for the deceased person.

Creditors may claim any debts left by the person who died against the estate. If there are insufficient funds in the estate, the debt can remain unpaid or partially unpaid. The executor or administrator of the estate will pay creditors proportionally in accordance with the funds available.

## 3 FOR MORE INFORMATION & ADVICE

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You may like to contact a solicitor or the **ACT Public Trustee's Office** for more advice on various aspects of these questions.

> See also *Chapter 2; Booklet 8* for contact information of relevant organisations; and *Booklet 6* for some relevant publications.

## 4 YOUR OWN WILL

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- Check your own will and revise it, where relevant.
- If you don't have a will, perhaps now is the time to have one drawn up.

# GLOSSARY

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**administrator:** person appointed by the court to administer an **estate** on **intestacy**. Usually the person who takes the largest interest in the estate is chosen. Is granted **letters of administration**.

**barrister:** a lawyer whose main activity is to be an advocate in court, hence questioning witnesses and making submissions.

**beneficiary:** person designated (in a will or insurance policy, for example) to receive benefit.

**claimant:** a person who has made a claim.

**common law:** body of legal principles and rules based on customs and court decisions (as opposed to **statute law** (Acts, Regulations, etc.)).

**compulsory third party (CTP) insurance:** provides insurance cover for owners and drivers of registered vehicles who cause personal injury or death to other road users, including pedestrians. The NRMA is the sole authorised insurer for the CTP scheme in the ACT.

**creditor:** a person or organisation to whom money is owed.

**damages:** compensation for injury, loss or damage.

**deceased:** person who has died.

**defendant:** party against whom a claim (or charge) is brought in a proceeding.

**estate: assets** (money, real estate, personal property) less **liabilities** (debts) left by the **deceased**; includes the balance in a bank account in the sole name of the person who died.

To administer the estate:

- If there is a **will**, the will normally needs to be ‘proved’ (i.e. declared to be the final and valid will) (by a grant of **probate** authorising the **executor** to act).
- On **intestacy**, a grant of **letters of administration** needs to be made to an **administrator**.
- In some small estates, it is not necessary to ‘prove’ the will or to have an administrator appointed.

**excess:** the amount of money an insured may be asked to contribute towards a claim made on the insurance policy.

**executor:** a person named in a **will** to carry out the provisions of the will. Responsibilities include paying any liabilities from the **estate** and then distributing the assets to the **beneficiaries**.

**intermeddle:** take an active role in a matter to which one is not a party; deal with the deceased’s assets without authority.

**intestacy:** circumstances where a person dies without having left a valid or complete **will**.

**legal costs** and related terms (**disbursement, counsel's fees, solicitor-client costs, party-party costs, punt** or **spec**): > see *Chapter 4*.

**letters of administration**: document issued by the Supreme Court appointing an **administrator** of an **estate** where there is no executor who takes probate.

**liability**: an obligation, especially for payment of money.

**litigation**: a legal dispute that is to be settled by a court or tribunal.

**motor accident or crash**: an accident caused by, or arising out of, the use of a motor vehicle or a trailer.

**next of kin**: closest family member(s).

**no-claim bonus** (also 'no-claim discount' or 'rating'): a reduction in the **premium** paid on an insurance policy given when an at-fault claim has not been made on the policy for a specified period of time.

**nominal defendant**: the person or party nominated to defend against a claim, e.g. the insurer nominated to handle claims for compensation for personal injury or death where the vehicle at fault is unregistered or unidentified.

**party**: a person or organisation immediately concerned in a proceeding or transaction (e.g. an insurance contract or incident).

**premium**: the amount of money payable by the insured to the insurer for the insurance policy.

**plaintiff**: party who brings an action.

**probate**: proof of the **will** to the court. The **grant of probate** authorises the **executor** to do everything necessary to administer the **estate**.

**solicitor**: a lawyer whose main activities are to advise clients on the law and prepare documents.

**vehicle at fault**: vehicle found to be at least partly responsible for the accident.

**will**: written instructions signed by the person who died and by witnesses concerning how the person's property is to be distributed after their death.