

s22

**From:** s22  
**Sent:** Tuesday, 11 February 2025 11:17 AM  
**To:** s22  
**Cc:**  
**Subject:** RE: LEX 43140 - Policy register item - Interpretation of subclause 4(1)(a) of the CVCS [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Thanks s22 referred to a “legal advice registry” – is that [E21-549398](#) in TRIM or something different?

In terms of my thinking:

While clause 4 enables vaccine recipients to make more than one claim, it’s not totally clear to me what in clause 4 alters (or purports to alter) the operation of clause 3, which restricts the application of the Scheme to claims received by SA on or before the end date. On my reading, a recipient might satisfy the requirements under clause 4 to make a second or subsequent claim under clause 4, but the claim would still need to be submitted by the end date for the Scheme to apply under clause 3. I also note that clause 3 explicitly provides for claims under subclause 5(4) to be made after the scheme end date – the absence of anything similar in relation to claims under clause 4 affirms to me that the end date applies as usual to these claims.

Chat further at 1.

s22

**From:** s22 @Health.gov.au>  
**Sent:** Tuesday, 11 February 2025 10:52 AM  
**To:** s22 @Health.gov.au>  
**Cc:** s22 @Health.gov.au>  
**Subject:** FW: LEX 43140 - Policy register item - Interpretation of subclause 4(1)(a) of the CVCS [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

Found this previous advice on clause 4(1)(a)(i).

**From:** s22 @Health.gov.au>  
**Sent:** Wednesday, 20 December 2023 11:21 AM  
**To:** s22 @Health.gov.au>  
**Subject:** FW: LEX 43140 - Policy register item - Interpretation of subclause 4(1)(a) of the CVCS [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

**For our legal advice registry**

Please and thanks

s22

**From:** s22 @Health.gov.au>  
**Sent:** Thursday, 14 December 2023 2:48 PM  
**To:** s22 @Health.gov.au>  
**Cc:** s22 @health.gov.au>; s22 @health.gov.au>; s22 @Health.gov.au>; AS22 @Health.gov.au>

# S42

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**From:** S22 <[REDACTED]@health.gov.au>  
**Sent:** Monday, 3 July 2023 10:30 AM  
**To:** S22 <[REDACTED]@Health.gov.au>; S22 <[REDACTED]@health.gov.au>  
**Subject:** TRIM: FW: \*for Policy Clarification\* COVID19 Vaccine Claims Scheme: Clause 4(1)(a) [SEC=OFFICIAL]

Hi S22

## s42

## s22

Thanks  
S22



s22

**From:** s22  
**Sent:** Wednesday, 12 February 2025 8:07 PM  
**To:** s22  
**Cc:**  
**Subject:** RE: Clause 4 development [SEC=OFFICIAL]

Thank you s22 a bit belated but wanted to acknowledge that this is a great pickup. s22 comment certainly reinforces my view that clause 4 was not intended to facilitate claims beyond the end date of the Scheme!

s22

**From:** s22 <s22@Health.gov.au>  
**Sent:** Tuesday, 11 February 2025 4:46 PM  
**To:** s22 <s22@Health.gov.au>  
**Cc:** s22 <s22@Health.gov.au>  
**Subject:** Clause 4 development [SEC=OFFICIAL]

Please see s22 comments on page 21, regarding further related harm.

'Needs to align with the approach below subject to the Minister agreeing to this approach).

It is proposed that where a claimant has received compensation for a future loss, and that loss extends for at least six months beyond the period of injury covered in the initial claim, that the person should be able to submit a new claim for the additional period. This would need to be supported by medical evidence. There would be no reconsideration of any other aspect of a claim already paid (for example, amounts paid in respect of pain and suffering for the initial claim period). This option would only be available to claimants if it occurred within the two year period after the end of the emergency period.'

[contentmanager://record/?DB=A7&Type=6&Items=1&Item1&URI=219679091](https://contentmanager://record/?DB=A7&Type=6&Items=1&Item1&URI=219679091)

s22

**Medical Indemnity and Medicare Eligibility Section**

MBS Policy and Specialist Programs Branch  
 Medicare Benefits and Digital Health Division | Health Resourcing Group  
 Australian Government Department of Health and Aged Care  
 T: 03 s22 <s22@Health.gov.au>  
 PO Box 9848, Canberra ACT 2601, Australia

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# s22

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#### 4 Compensation for Harm

(1) Under the Scheme, an Eligible Applicant will be paid Compensation for Harm assessed in accordance with the Scheme as determined by the Decision Maker.

~~(2) Contracting COVID-19 is not Harm for the purposes of the Scheme.~~

**Commented [DJ80]:** Harm is already defined as excluding contracting COVID-19 – is this reference needed?

~~(2) Only one Claim can be made in relation to a COVID-19 Vaccine Recipient unless: may be made by a~~

**Commented [MM81]:** You use “claim” but “Claim” is defined term above. Should “claim” be capitalised in this clause”.

(a) ~~[person in respect of the Harm suffered by that COVID-19 Vaccine Recipient: except in circumstances where one of the following~~

## Draft Policy Version 24-31 — 3 November comments on 2915-October (KWM edits)

occurs and could not have been foreseen at the time the Applicant made their first claim under the Scheme:

— the Harm for which the Applicant claimed becomes significantly worsens and that worsening has not already been compensated under the Scheme or by a Third Party Payer; or

- (i) requires additional treatment for a period of at least 6 months after the latest date for which Compensation was originally paid under the Scheme in respect of treatment.

### (Further Related Harm)

NOTE: For example, if Compensation is paid for future Out of Pocket Expenses for a COVID-19 Vaccine Recipient's medical treatment for a period of 6 months, the COVID-19 Vaccine Recipient must require that treatment for at least a further 6 months (at least 12 months in total).

- (b) that COVID-19 Vaccine Recipient suffers different and unrelated Harm (Unrelated Harm), different Harm is suffered.

provided that:

- (c) the Applicant (or COVID-19 Vaccine Recipient on whose behalf a Claim has been made) has not previously received Compensation under the Scheme for the Further Related Harm or Unrelated Harm;
- (d) the Applicant (or COVID-19 Vaccine Recipient on whose behalf a Claim has been made) has not previously been compensated by a Third Party Payer for the Further Related Harm or Unrelated Harm;
- (e) the Further Related Harm or Unrelated Harm was not known or foreseeable when the first Claim was decided;
- (f) the further Claim is made before the End Date; and
- (g) the Applicant satisfies all other criteria required under the Scheme in relation to the Further Related Harm or Unrelated Harm.
- (3) Only one Claim may be made in respect of the death of a Deceased COVID-19 Vaccine Recipient.

- (3)(4) Under the Scheme, Compensation may only be paid to an Eligible Applicant or the Representative of an Eligible Applicant.

**Commented [ML82]:** Needs to align with the approach below subject to the Minister agreeing to this approach).

It is proposed that where a claimant has received compensation for a future loss, and that loss extends for at least six months beyond the period of injury covered in the initial claim, that the person should be able to submit a new claim for the additional period. This would need to be supported by medical evidence. There would be no reconsideration of any other aspect of a claim already paid (for example, amounts paid in respect of pain and suffering for the initial claim period). This option would only be available to claimants if it occurred within the two year period after the end of the emergency period.

**Commented [KWM83]:** See amendments made.

**Commented [WT84]:** Significantly worse not required

**Commented [WT85]:** Formatting for this section could be simplified

s22

s22

**From:** s22  
**Sent:** Friday, 21 February 2025 7:47 PM  
**To:** PANEL.COVID19VACCINE.CLAIM.SCHEME  
**Cc:** s22; Medical Indemnity; s22  
**Subject:** RE: QUERY - Policy intent regarding Clause 4 of the Policy [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

Hi again s22

We've now received advice on this issue from our internal legal area. (Unfortunately I can't take any credit for the quick turnaround – we received their response before I'd even had a chance to follow up!)

s42 A revised response to your questions, cleared by them, is below in blue text. You'll notice the questions are slightly different – we reworded them to ensure our request was limited to legal advice and did not seek a policy position.

I hope this additional information is of assistance! Please reach out if you have any questions or would like to discuss further.

Have a great weekend,

s22

Director – Medical Indemnity and Medicare Eligibility Section

T: 02 s22 [@health.gov.au](mailto:s22@health.gov.au)

s42

From: s22 On Behalf Of PANEL.COVID19VACCINE.CLAIM.SCHEME  
 Sent: Wednesday, 19 February 2025 1:53 PM  
 To: s22  
 Cc: s22 PANEL.COVID19VACCINE.CLAIM.SCHEME ; s22 ; Medical Indemnity ; s22  
 Subject: RE: QUERY - Policy intent regarding Clause 4 of the Policy [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

Hello s22

Many thanks, happy for this to be added as an agenda item in tomorrow's meeting.

Kind regards,

s22, A/g Assistant Director

Phone: (s22

E-mail: s22 @servicesaustralia.gov.au

Complex Payments

Health Design and Complex Payments Branch

Health Delivery Transformation Division



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From: s22 @Health.gov.au>  
 Sent: Wednesday, 19 February 2025 9:37 AM  
 To: s22 @servicesaustralia.gov.au>  
 Cc: s22 @servicesaustralia.gov.au>; s22 @servicesaustralia.gov.au>;  
 s47E(d) s47E(d) @servicesaustralia.gov.au>;  
 s22 @servicesaustralia.gov.au>; Medical Indemnity  
 s47E(d) @health.gov.au>; s22 @Health.gov.au>  
 Subject: RE: QUERY - Policy intent regarding Clause 4 of the Policy [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

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Hi s22

Thanks for your email. We were aware of the previous advice and we reviewed it again prior to responding to your recent query.

s42

# s42

As requested, we've referred our response to our internal legal area for advice. As you may be aware, they're dealing with a significant backlog of requests for advice so unfortunately we can't guarantee a prompt response – although we'll do our best to follow up! In the interim we'd be happy to add this to the agenda for discussion at our regular meeting tomorrow.

Kind regards,

s22

s22

Director – Medical Indemnity and Medicare Eligibility Section

T: 02 s22 [@health.gov.au](mailto:s22@health.gov.au)

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**From:** s22 [@servicesaustralia.gov.au](mailto:s22@servicesaustralia.gov.au)  
**Sent:** Tuesday, 18 February 2025 4:29 PM  
**To:** s22 [@Health.gov.au](mailto:s22@Health.gov.au); s22 [@Health.gov.au](mailto:s22@Health.gov.au); Medical Indemnity <s47E(d)@health.gov.au>  
**Cc:** s22 [@servicesaustralia.gov.au](mailto:s22@servicesaustralia.gov.au); s22 [@servicesaustralia.gov.au](mailto:s22@servicesaustralia.gov.au); s47E(d) [@servicesaustralia.gov.au](mailto:s47E(d)@servicesaustralia.gov.au); s22 [@servicesaustralia.gov.au](mailto:s22@servicesaustralia.gov.au); s22 [@servicesaustralia.gov.au](mailto:s22@servicesaustralia.gov.au)  
**Subject:** RE: QUERY - Policy intent regarding Clause 4 of the Policy [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

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Hello s22

Thank you for your reply and apologies in the delay in getting back to you.

# s42

In light of the above and attached email, can we please ask that our questions below are reviewed by your Legal colleagues, now that the Scheme has closed to new claims?

We kindly ask that we receive a response as soon as possible as we are currently in receipt of a claim for further harm, and we are also issuing deem payable letters to claimants that advise they can come back to us if they suffer further or subsequent harm.

Happy to discuss this further in our catch up on Thursday 20 February.

Kind regards,

s22, A/g Assistant Director  
 Phone: s22  
 E-mail: s22 @servicesaustralia.gov.au  
 Complex Payments  
 Health Design and Complex Payments Branch  
 Health Delivery Transformation Division



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From: s22 @Health.gov.au>  
 Sent: Wednesday, 12 February 2025 8:43 PM  
 To: s22 @servicesaustralia.gov.au>; s22 @Health.gov.au>; Medical Indemnity s47E(d) @health.gov.au>  
 Cc: s22 @servicesaustralia.gov.au>; s22 @servicesaustralia.gov.au>; s47E(d) @servicesaustralia.gov.au>  
 Subject: RE: QUERY - Policy intent regarding Clause 4 of the Policy [SEC=OFFICIAL]

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Hi s22

Thanks again for your email.

We've considered your questions and have provided responses to both – below in blue text. Please note that this is policy advice only and has not been reviewed by our legal colleagues.

Please don't hesitate to reach out if you have any questions or would like further information. We'd also be happy to discuss this at our regular catch up on 20 Feb.

Kind regards,

s22

Director – Medical Indemnity and Medicare Eligibility Section  
 T: 02 s22 @health.gov.au

1. We would like to confirm that the intent of Policy clause 4 is that subsequent and further related harm claims can be accepted after the Scheme close date?

No. While clause 4 enables vaccine recipients to make more than one claim in total, it is not intended to alter the operation of clause 3, which provides that the Scheme applies to claims received by Services Australia on or before the end date of the Scheme.

(Clause 3 explicitly provides for claims to be accepted after the end date if they are Tier 3 claims made under subclause 5(4). It does not include any similar provision for additional claims under clause 4.)

2. If a claim has been paid that includes, for example, future out of pocket loss or future lost earnings up to the year 2030, and the vaccine recipient suffers further related harm for a period no less than 12 months in 2031, can a claim for further harm can be accepted this far down the track? This is in reference to clause 4(1)(a)(ii) that I have highlighted. For context, we have paid a claim where the latest payment date is for future lost earnings up to June 2040.

No. As noted above, additional claims for subsequent and further harm must be received by Services Australia on or before the end date of the Scheme.

From: S22 <[redacted]@servicesaustralia.gov.au>  
 Sent: Thursday, 6 February 2025 4:54 PM  
 To: S22 <[redacted]@Health.gov.au>; S22 <[redacted]@Health.gov.au>; Medical Indemnity S47E(d) <[redacted]@health.gov.au>  
 Cc: S22 <[redacted]@servicesaustralia.gov.au>; S22 <[redacted]@servicesaustralia.gov.au>; S22 <[redacted]@servicesaustralia.gov.au>; S47E(d) <[redacted]@servicesaustralia.gov.au>  
 Subject: QUERY - Policy intent regarding Clause 4 of the Policy [SEC=OFFICIAL]

Hello S22

We would like to confirm our understanding of the Policy intent regarding Clause 4 of the Policy and have two questions:

*Clause 4 Claims that can be made – Tier 1 and Tier 2 claims.*

*(1) Only one Claim can be made in relation to each COVID-19 Vaccine Recipient (other than a Deceased COVID-19 Vaccine Recipient) unless:*

*(a) the Harm suffered by that COVID-19 Vaccine Recipient:*

*(i) significantly worsens; and*

*(ii) requires additional treatment for a period of at least 6 months after the latest date for which Compensation was originally paid under the Scheme in respect of Out of Pocket Expenses and/or Lost Earnings, (Further Related Harm);*

*or*

*Note: For example, if Compensation is paid for future Out of Pocket Expenses for the COVID-19 Vaccine Recipient's medical treatment for a period of 6 months, the COVID-19 Vaccine Recipient must require that treatment for at least a further 6 months (at least 12 months in total).*

*(b) that COVID-19 Vaccine Recipient suffers Harm that:*

*(i) is different and unrelated to the Harm for which Compensation was previously paid in relation to that COVID-19 Vaccine Recipient (Unrelated Harm); and/or*

*(ii) was not within the definition of Harm as at the date on which a previous Claim was received by Services Australia, (Subsequently Recognised Harm),*

*provided that:*

*(c) the Claimant (or COVID-19 Vaccine Recipient on whose behalf a Claim has been made) has not previously received Compensation under the Scheme for the Further Related Harm, the Unrelated Harm or the Subsequently Recognised Harm;*

*(d) in relation to Further Related Harm and Unrelated Harm only, the Further Related Harm or the Unrelated Harm was not known or foreseeable when the previous Claim was determined;*

*(e) in relation to Subsequently Recognised Harm only, the Subsequently Recognised Harm claimed was not within the definition of Harm as at the date on which a previous Claim was received by Services Australia (whether or not the Harm now claimed was previously claimed).*

Our two questions are as follows:

1. We would like to confirm that the intent of Policy clause 4 is that subsequent and further related harm claims can be accepted after the Scheme close date?
2. If a claim has been paid that includes, for example, future out of pocket loss or future lost earnings up to the year 2030, and the vaccine recipient suffers further related harm for a period no less than 12 months in 2031, can a claim for further harm can be accepted this far down the track? This is in reference to clause 4(1)(a)(ii) that I have highlighted. For context, we have paid a claim where the latest payment date is for future lost earnings up to June 2040.

If you have any questions or queries regarding the above, please let me know.

Kind regards,

s22 [REDACTED], A/g Assistant Director

Phone: (s22 [REDACTED])

E-mail: s22 [REDACTED] [@servicesaustralia.gov.au](mailto:s22[REDACTED]@servicesaustralia.gov.au)

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**Australian Government**  
**Department of Health**

**Ministerial Information Request****MB22-000181****Version (1)****Date sent to MO:24/01/2022****To: Minister Hunt****Subject: Vaccine Claims Scheme****Response:**

The COVID-19 Vaccination Claims Scheme (Scheme) has been established as a fit-for-purpose, time-limited claims scheme to respond to the unprecedented circumstances of the COVID-19 pandemic. It is designed to ensure that people who have suffered a recognised moderate to significant adverse effect as a direct result of a COVID-19 vaccine have faster access to compensation rather than pursuing a costly and complex court process which would require fault or negligence to be established.

The Scheme has been established on a time-limited basis with lump-sum payment arrangements. The Scheme is designed to provide a one-off payment to claimants in the vast majority of cases. It is not designed for interim or ongoing payments.

As with other compensation systems, the Scheme does involve an evidence gathering processes in order to establish the cause and extent of the harm, and the likely future costs and losses using the best available information and estimates available at the time of the claim.

All claims under the Scheme need to be supported by a medical report from the General Practitioner and/or Specialist treating the patient. The prescribed [form](#) available is on the Services Australia website.

The medical report requires the treating practitioner's opinion on the diagnosed condition or injury and the likely link to the vaccination.

If the condition is ongoing, the report can include the treating practitioner's prognosis and estimate of the future medical expenses for treatment, and estimated time off work. It can also include any qualifications and uncertainties relating to the prognosis and future estimates.

The report will be considered by a medical assessor and Independent Expert Panel member as part of the assessment process.

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If s47F wishes to submit a claim under the Scheme, he will need to submit evidence satisfying the eligibility criteria and demonstrating the extent of the clinical condition or injury suffered.

He will also need to provide evidence to support any other losses claimed. The Services Australia website provides a guide through the requirements for claiming other expenses.

There is provision in clause four of the Policy for a second claim to be submitted in certain circumstances. This includes instances where the harm suffered has significantly worsened; and requires additional treatment for a period of at least six months beyond the time estimated in the first claim.

The Scheme is a new Government initiative. The policy is a living document and can be reviewed from time to time. The Department will consider whether any clarification or amendment is required.

The Department is preparing a response along similar lines for three other items of correspondence from s47F, his family and the Member for Mayo.

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**OFFICIAL****Cover Page for Ministers' Offices**

|                                                         |                                                                                            |
|---------------------------------------------------------|--------------------------------------------------------------------------------------------|
| <b>Minister</b>                                         | <b>Minister Hunt</b>                                                                       |
| <b>PDR Number</b>                                       | <b>MB22-000181</b>                                                                         |
| <b>Subject</b>                                          | <b>**Urgent 3 day turnaround** MIR - Vaccine Claims Scheme (Senator McLachlan obo s47F</b> |
| <b>Due Date</b>                                         | <b>25 January 2022</b>                                                                     |
| <b>Quality Assurance Check (completed by line area)</b> | <b>s22</b>                                                                                 |
| <b>Contact Officer</b>                                  |                                                                                            |
| <b>Clearance Officer</b>                                | Louise Riley<br><b>s22</b>                                                                 |
| <b>Division/Branch</b>                                  | Health Resourcing   Medical Benefits                                                       |

**Adviser/DLO Comments:**Return to  
Dept for:Redraft ☐

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# s22

7

## Claims

### Tier 1 Claims and Tier 2 Claims

(1) Subject to clause 7(2), a Tier 1 Claim or Tier 2 Claim may only be made by or on behalf of an individual who is a COVID-19 Vaccine Recipient.

(2) Only one Tier 1 Claim or Tier 2 Claim can be made unless:

(a) the Harm significantly worsens; or

(b) the COVID-19 Vaccine Recipient reasonably requires additional treatment in relation to the Harm for a period of at least 6 months after the latest date for which Compensation was originally paid under the Scheme in respect of treatment; or

Note: For example, if Compensation is paid for future Out of Pocket Expenses for a COVID-19 Vaccine Recipient's medical treatment for a period of 6 months, the COVID-19 Vaccine Recipient must require that treatment for at least a further 6 months (at least 12 months in total).

(c) the COVID-19 Vaccine Recipient suffers Harm that is different and unrelated to the Harm for which Compensation was originally paid.

### Tier 3 Claims

(3) Subject to clauses 1(1)(17)(4) to 7(6), a Tier 3 Claim may only be made by or on behalf of an individual who is:

**Commented [BM51]:** We recommend putting some objective criteria around this requirement (as is done in the alternative requirement) to limit or avoid disputation and potential vexatious claims.

**Formatted:** Heading 3, No bullets or numbering

**Commented [BM52]:** Policy call: consider whether the dependency requirements need to be satisfied at the time of vaccination, claim or death.

**Commented [BM53]:** If the Claimant did not pay the funeral expenses, a mechanism is required to ensure that the service provider is paid or the individual who paid the expenses is reimbursed.

**Draft Policy Version 24—29 October (KWM edits)**

- (a) ~~if the Deceased COVID-19 Vaccine Recipient was a minor at the date of death—a Parent of the Deceased COVID-19 Vaccine Recipient; or~~
- (b) ~~if the Deceased COVID-19 Vaccine Recipient was not a minor at the date of death—a Dependant of the Deceased COVID-19 Vaccine Recipient; or~~
- (c) ~~if the Deceased COVID-19 Vaccine Recipient was not a minor at the date of death and has no surviving Dependents—a Non-Dependant Child of the Deceased COVID-19 Vaccine Recipient; or~~
- (d) ~~if the Deceased COVID-19 Vaccine Recipient was not a minor at the date of death and has no surviving Dependents or Non-Dependant Children—a Parent of the Deceased COVID-19 Vaccine Recipient; or~~
- (e) ~~if the Deceased COVID-19 Vaccine Recipient was not a minor at the date of death and has no surviving Dependents, Non-Dependant Children or Parents—a Sibling of the Deceased COVID-19 Vaccine Recipient; or~~
- (f) ~~if the Deceased COVID-19 Vaccine Recipient was not a minor at the date of death has no surviving Dependents, Non-Dependant Children, Parents or Siblings—an Other Dependant of the Deceased COVID-19 Vaccine Recipient.~~
- (1) ~~In order for an Eligible Applicant to receive compensation, the Eligible Applicant must:~~
- (2) ~~not have made a previous Claim. Only one Tier 3 Claim may be made by or on behalf of an individual unless:~~
- (3) ~~permitted to do so by clause (2); or~~
- (4) ~~the previous claim or Claims made by the Eligible Applicant relates was made in relation to a different Deceased COVID-19 Vaccine Recipient.~~
- (5) ~~Only one Tier 3 Claim may be made in respect of a Deceased COVID-19 Vaccine Recipient.~~
- (6) ~~A Claim including a Tier 3 Dependant Lump Sum Payment can only be made if the Deceased COVID-19 Vaccine Recipient had at least one Dependant at the time of death.~~
- (5) ~~provide written evidence and information in support of the Claim in accordance with this Policy and as specified in the Approved Claim Form; and~~
- (6) ~~be assessed as entitled to Compensation by the Decision Maker in accordance with clause 8.~~

**Commented [BM54]:** Note that the vaccination could be given when a minor and the death could be after they reach 18 years. If the Policy is that the relevant date of assessment is the date of vaccination, this can be changed. Either way, best to be specific.

**Commented [BM55]:** Moved to clause 4.

s22

#### 4. Compensation for Harm Injury

- (1) Under the Scheme, an Eligible Applicant who makes a Claim will be paid Compensation for Injury-Harm assessed in accordance with the Scheme.
- (2) For the avoidance of doubt;
- a. contracting COVID-19 is not an Injury-Harm for the purposes of the Scheme; -and
  - b. only one claim may be made by a person in respect of an Injury-Harm except in circumstances where one of the following occurs and could not have been foreseen at the time the person made their claim under the Scheme:
    - i. the Injury-Harm for which the person claimed becomes significantly worse; or
    - ii. an additional Injury-Harm is suffered.

s22

s22

#### 4 Compensation for Harm

(1) Under the Scheme, an Eligible Applicant ~~who makes a Claim~~ will be paid Compensation for Harm assessed in accordance with the Scheme.

~~(2) For the avoidance of doubt;~~

~~(a)(2) Contracting COVID-19 is not Harm for the purposes of the Scheme; and~~

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~~(b)(3) Only one claim may be made by a person in respect of Harm except in circumstances where one of the following occurs and could not have been foreseen at the time the person Applicant made their first claim under the Scheme:~~

~~(i)(a) the Harm for which the person Applicant claimed becomes significantly worse and that worsening has not already been compensated under the Scheme or by a Third Party Payer; or~~

~~(ii)(b) an additional different Harm is suffered.~~

s22

# s22

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4. **Compensation for Injury**

**Commented [WT20]:** Is this where we list the conditions covered by the scheme?

- (1) Under the Scheme, an Eligible Applicant who makes a Claim will be paid Compensation for Injury assessed in accordance with the Scheme.

**Commented [BC21]:** Is this just for Tier 1? For Tier 2 applications, a claimant may be eligible but aspects of their claim may not be paid?

- (2) For the avoidance of doubt;

- a. contracting COVID-19 is not an Injury for the purposes of the Scheme; and
- b. only one claim may be made by a person in respect of an Injury except in circumstances where one of the following occurs and could not have been foreseen at the time the person made their claim under the Scheme:
  - i. the Injury for which the person claimed becomes significantly worse; or
  - ii. an additional Injury is suffered.

**Commented [BC22]:** Will sequelae following recognised clinical conditions that may or may not be linked to the clinical condition be included? (i.e diagnosed with TTS, long hospital stay, now ongoing social anxiety and can no longer work... is the social anxiety an injury as it is associated with the diagnosis and treatment of the clinical condition)?

**Commented [WT23]:** Tbc - as per words from s22

# s22

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#### **4 Claims that can be made**

- (1) Only one Claim can be made in relation to each COVID-19 Vaccine Recipient unless:
  - (a) the Harm suffered by that COVID-19 Vaccine Recipient:
    - (i) significantly worsens; and
    - (ii) requires additional treatment for a period of at least 6 months after the latest date for which Compensation was

## Draft Policy (KWM edits – 18 November)

originally paid under the Scheme in respect of Out of Pocket Expenses and/or Lost Earnings,

**(Further Related Harm); or**

NOTE: For example, if Compensation is paid for future Out of Pocket Expenses for the COVID-19 Vaccine Recipient's medical treatment for a period of 6 months, the COVID-19 Vaccine Recipient must require that treatment for at least a further 6 months (at least 12 months in total).

- (b) that COVID-19 Vaccine Recipient suffers Harm that:
  - (i) is different and unrelated to the Harm for which Compensation was previously paid in relation to that COVID-19 Vaccine Recipient (**Unrelated Harm**); and/or
  - (ii) was not within the definition of Harm as at the date on which a previous Claim was received by Services Australia, (**Subsequently Recognised Harm**);

provided that:

- (c) the Claimant (or COVID-19 Vaccine Recipient on whose behalf a Claim has been made) has not previously received Compensation under the Scheme for the Further Related Harm, the Unrelated Harm or the Subsequently Recognised Harm;
- (d) in relation to the Further Related Harm or the Unrelated Harm, the Further Related Harm or the Unrelated Harm was not known or foreseeable when the previous Claim was determined;
- (e) in relation to Subsequently Recognised Harm, the Harm claimed was not within the definition of Harm as at the date on which a previous Claim was received by Services Australia (whether or not the Harm now claimed was previously claimed);
- (f) the further Claim is received by Services Australia before the End Date; and
- (g) the Claimant satisfies all other criteria required under the Scheme in relation to the Further Related Harm, the Unrelated Harm or the Subsequently Recognised Harm.

(2) Only one Claim may be made in respect of the death of a Deceased COVID-19 Vaccine Recipient. However, if a Claim is made by a Tier 3 Family Representative, and a Tier 3 Estate Representative or a Tier 3 Authorised Representative later makes a Claim in respect of the same Deceased COVID-19 Vaccine Recipient prior to the determination of the Claim made by the Tier 3 Family Representative, those Claims will be consolidated and thereafter only the Tier 3 Estate Representative or Tier 3 Authorised Representative will be the Claimant in relation to the consolidated Claim.

(2) —

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# s22

#### 4 Compensation for Harm

- (1) Under the Scheme, an Eligible Applicant will be paid Compensation for Harm assessed in accordance with the Scheme.
- (2) Contracting COVID-19 is not Harm for the purposes of the Scheme.
- (3) Only one claim may be made by a person in respect of Harm except in circumstances where one of the following occurs and could not have been foreseen at the time the Applicant made their first claim under the Scheme:
  - (a) the Harm for which the Applicant claimed becomes significantly worse and that worsening has not already been compensated under the Scheme or by a Third Party Payer; or
  - (b) different Harm is suffered.
- (4) Under the Scheme, Compensation may only be paid to an Eligible Applicant or the Representative of an Eligible Applicant.

# s22

#### 4 Claims that can be made – Tier 1 and Tier 2 claims

(1) Only one Claim can be made in relation to each COVID-19 Vaccine Recipient (other than a Deceased COVID-19 Vaccine Recipient) unless:

- (a) the Harm suffered by that COVID-19 Vaccine Recipient:
  - (i) significantly worsens; and
  - (ii) requires additional treatment for a period of at least 6 months after the latest date for which Compensation was originally paid under the Scheme in respect of Out of Pocket Expenses and/or Lost Earnings,

(Further Related Harm); or

NOTE: For example, if Compensation is paid for future Out of Pocket Expenses for the COVID-19 Vaccine Recipient's medical treatment for a period of 6 months, the COVID-19 Vaccine Recipient must require that treatment for at least a further 6 months (at least 12 months in total).

- (b) that COVID-19 Vaccine Recipient suffers Harm that:
  - (i) is different and unrelated to the Harm for which Compensation was previously paid in relation to that COVID-19 Vaccine Recipient (**Unrelated Harm**); and/or
  - (ii) was not within the definition of Harm as at the date on which a previous Claim was received by Services Australia, (**Subsequently Recognised Harm**),

provided that:

- (c) the Claimant (or COVID-19 Vaccine Recipient on whose behalf a Claim has been made) has not previously received Compensation under the Scheme for the Further Related Harm, the Unrelated Harm or the Subsequently Recognised Harm;
- (d) in relation to Further Related Harm and Unrelated Harm only, the Further Related Harm or the Unrelated Harm was not known or foreseeable when the previous Claim was determined;
- (e) in relation to Subsequently Recognised Harm only, the Subsequently Recognised Harm claimed was not within the definition of Harm as at the date on which a previous Claim was received by Services Australia (whether or not the Harm now claimed was previously claimed).

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#### 4 Claims that can be made

- (1) Only one Claim can be made in relation to each COVID-19 Vaccine Recipient unless:

- (a) the Harm suffered by that COVID-19 Vaccine Recipient:

- (i) significantly worsens; or s42

- (ii) requires additional treatment for a period of at least 6 months after the latest date for which Compensation was originally paid under the Scheme in respect of Out of Pocket Expenses and/or Lost Earnings,

**(Further Related Harm).**

NOTE: For example, if Compensation is paid for future Out of Pocket Expenses for the COVID-19 Vaccine Recipient's medical treatment for a period of 6 months, the COVID-19 Vaccine Recipient must require that treatment for at least a further 6 months (at least 12 months in total).

- (b) that COVID-19 Vaccine Recipient suffers Harm that is different and unrelated to the Harm for which Compensation was previously paid in relation to that COVID-19 Vaccine Recipient (**Unrelated Harm**),

provided that:

- (c) the Claimant (or COVID-19 Vaccine Recipient on whose behalf a Claim has been made) has not previously:
- (i) received Compensation under the Scheme for the Further Related Harm or the Unrelated Harm; or
  - (ii) been compensated by a Third Party Payer for the Further Related Harm or the Unrelated Harm;
- (d) the Further Related Harm or the Unrelated Harm was not known or foreseeable when the first Claim was determined;
- (e) the further Claim is made before the End Date; and
- (f) the Claimant satisfies all other criteria required under the Scheme in relation to the Further Related Harm or the Unrelated Harm.
- (2) Only one Claim may be made in respect of the death of a Deceased COVID-19 Vaccine Recipient.

## Attachment A

# s22

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**(d) Subsequent claims for an exacerbated injury outcome or new injuries.**

It is proposed that where a claimant has received compensation for future loss, and subsequently experiences an extension or exacerbation of their injury that extends for at least six months beyond the period of future loss compensated in the initial claim, that the person should be able to submit a new claim for any loss suffered during the additional period. The ability to make such a second claim would only arise where the claimant suffers additional unforeseen impacts leading to a further period of loss (i.e. the further period of loss could not have been foreseen when the claim was first determined). This type of claim would need to be supported by medical evidence. There would be

**Attachment A**

no reconsideration of any other aspect of a claim already paid (for example, amounts paid in respect of pain and suffering for the initial claim period).

This may require the Commonwealth to pay additional compensation amounts for some claimants and incur additional administrative costs. It may also require the deed of settlement to include an exception for a further claim in the event of prolonged or exacerbated injuries. This option would only be available to claimants if the secondary claim was lodged within the timeframe of the Scheme, i.e. no later than 2 years after the end of the declared emergency period under the Biosecurity Act.)

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## Draft Policy Version 24 - 15 October

s22

## 4 Compensation for Harm

- (1) Under the Scheme, an Eligible Applicant will be paid Compensation for Harm assessed in accordance with the Scheme.
- (2) Contracting COVID-19 is not Harm for the purposes of the Scheme.
- (3) Only one ~~Claim~~ claim may be made by a person in respect of Harm except in circumstances where one of the following occurs and could not have been foreseen at the time the Applicant made their first claim under the Scheme:
  - (a) the Harm for which the Applicant claimed becomes significantly worse and that worsening has not already been compensated under the Scheme or by a Third Party Payer; or
  - (b) different Harm is suffered.
- (4) Under the Scheme, Compensation may only be paid to an Eligible Applicant or the Representative of an Eligible Applicant.

**Commented [DJ51]:** Harm is already defined as excluding contracting COVID-19 – is this reference needed?

**Commented [MM52]:** You use “claim” but “Claim” is defined term above. Should “claim” be capitalised in this clause”.

**Commented [ML53]:** Needs to align with the approach below subject to the Minister agreeing to this approach). It is proposed that where a claimant has received compensation for a future loss, and that loss extends for at least six months beyond the period of injury covered in the initial claim, that the person should be able to submit a new claim for the additional period. This would need to be supported by medical evidence. There would be no reconsideration of any other aspect of a claim already paid (for example, amounts paid in respect of pain and suffering for the initial claim period). This may require the Commonwealth to pay additional compensation amounts for some claimants and incur additional administrative costs. It would also require the deed of release of the Commonwealth from further liability (outlined below) to include an exception for prolonged or exacerbated injuries. This option would only be available to claimants if it occurred within the two year period after the end of the emergency period.

s22

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s22

**From:** s22  
**Sent:** Friday, 5 November 2021 8:40 PM  
**To:** s22  
**Cc:** s22  
**Subject:** Re: FW: Position re a second claim under the Scheme [SEC=OFFICIAL:Sensitive]

Hi All,

Some of the conditions in the scheme may reoccur if exposure to the same situation occurs again. However this would be considered foreseeable and in most cases preventable through the administration of a different Covid vaccination/avoidance of Covid vaccination.

Having said this theoretically second conditions are possible. For example it is possible that someone could have myocarditis with an mRNA vaccination, chooses to have AstraZeneca instead for their second dose and end up with TTS.

Theoretically it is also possible that someone could have myocarditis with the initial vaccination dose and then be the unfortunate person who has the second vaccination dose administered in the wrong location and develops a shoulder injury.

Whilst this may occur in theory, in practice all these conditions are very rare in the first place and therefore the chances of two of these conditions occurring independently in the same person are very small.

So overall I can't say it won't ever happen, but I'd say it's very unlikely to happen.

Regards,

s22

Medical Adviser –MBS Policy and Specialist Services

Medical Benefits Division

MBS Policy and Specialist Services Branch

Australian Government Department of Health

T: 02 s22 @health.gov.au

Location: Sirius Building 8.S.131

GPO [Box 9848, Canberra ACT 2601, Australia](#)

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

On 5 November 2021 at 8:04:25 pm AEDT, s22 wrote:

Hello s22

As per details below, we would like your comments on the chances of one vaccine recipient having two relevant conditions after the one vaccination in the context of the Scheme.

Happy to discuss if easier than an extensive email.  
thanks

S22

Director – NDSS Enhancements Section

Technology Assessment and Access Division | Health Resourcing Group

Pharmacy Branch

Australian Government Department of Health

T: 02 S22 @health.gov.au

Location: Sirius Building 9.S.121

GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** S22

**Sent:** Friday, 5 November 2021 7:59 PM

**To:** HASLAM, Travis ; S22

**Cc:** S22

**Subject:** Position re a second claim under the Scheme [SEC=OFFICIAL:Sensitive]

Hi Travis,

The documents that went to the MO and letter to PM included a recommendation regarding 'Subsequent claims for an exacerbated injury outcome or new injuries'

The subsequent wording focused only on a description of an exacerbated injury that required treatment for more than six months after the original timeframe. There was no reference to the development of a new condition.

As well as catering for such an exacerbated case, the current draft policy (as below) also provides for a claim if a second condition is diagnosed. With the underlying concept that applicants can only make one claim per vaccination, no specific authority at Ministerial level, and subject to confirmation from a medical advisor that it is unlikely that a person would develop two conditions from the one vaccination, we are proposing to remove the highlighted text. (If a case emerged of two conditions from one vaccination, we could subsequently amend the policy).

However, we were interested in your thoughts before we discuss with the KWM team.

Thanks

**(1) Under the Scheme, an Eligible Applicant will be paid Compensation for Harm assessed in accordance with the Scheme as determined by the Decision Maker.**

**(2) Only one Claim can be made in relation to a COVID-19 Vaccine Recipient unless:**

**(a) the Harm suffered by that COVID-19 Vaccine Recipient:**

**(i) requires additional treatment for a period of at least 6 months after the latest date for which Compensation was originally paid under the Scheme in respect of treatment,**

**(Further Related Harm).**

NOTE: For example, if Compensation is paid for future Out of Pocket Expenses for a COVID-19 Vaccine Recipient's medical treatment for a period of 6 months, the COVID-19 Vaccine Recipient must require that treatment for at least a further 6 months (at least 12 months in total).

**(b) that COVID-19 Vaccine Recipient suffers different and unrelated Harm (Unrelated Harm),**

provided that:

**(c) the Applicant (or COVID-19 Vaccine Recipient on whose behalf a Claim has been made) has not previously received Compensation under the Scheme for the Further Related Harm or Unrelated Harm;**

**(d) the Applicant (or COVID-19 Vaccine Recipient on whose behalf a Claim has been made) has not previously been compensated by a Third Party Payer for the Further Related Harm or Unrelated Harm;**

**(e) the Further Related Harm or Unrelated Harm was not known or foreseeable when the first Claim was decided;**

**(f) the further Claim is made before the End Date; and**

**(g) the Applicant satisfies all other criteria required under the Scheme in relation to the Further Related Harm or Unrelated Harm.**

S22

Director – NDSS Enhancements Section

Technology Assessment and Access Division | Health Resourcing Group

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Location: Sirius Building 9.S.121

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[SEC=OFFICIAL:Sensitive]