



The COVID-19 Vaccine Claims Scheme is now live! What compensation is payable?

Author: [Seane Shalev](#)

Email: seanes@hallpayne.com.au

Phone: 07 3017 2400

Date: Monday January 17, 2022

In December 2021, [we wrote about the Federal Government's COVID-19 Vaccine Claim Scheme](#) (“**the Scheme**”) which was being created to provide compensation to eligible Australians who suffered an adverse reaction to a COVID vaccine. Services Australia has now opened their online portal to enable eligible participants to claim compensation. This article will look at the eligibility requirements, what compensation is payable, how to claim and how to dispute a rejected claim.

Who is eligible for compensation under the COVID Vaccine Claim Scheme?

To be eligible for compensation under the Scheme, **all** of the following requirements must be met. You must have:

1. received a Therapeutic Goods Administration (TGA) approved COVID-19 vaccine;
2. met the definition of “*harm*”, listed in the [COVID-19 Vaccine Claims Scheme policy](#) (see **below**);
3. been admitted to hospital because of the harm you suffered, or seek a waiver; and
4. experienced losses of \$1,000 or more.

Claimants can be represented by a parent or guardian or when dealing with the death of a person related to the administering of a COVID vaccine, the deceased’s estate representative.

There are two different definitions of “*harm*” in the policy:

1. Harm which relates to the administration of the vaccine; and
2. Vaccine-related harm, causing the development of a clinical condition.

The following is an [excerpt from the policy](#):

COVID-19 Vaccine Administration Related Harm means:

a) either a clinically diagnosed:

1. *shoulder injury; or*
2. *other moderate to significant physical injury giving rise to permanent impairment or the need for an extended period of medical treatment but excluding psychological distress (e.g. shock); and*

b) that was sustained during the administration of a COVID-19 Vaccine; and

c) that was most likely caused by the administration of the COVID-19 Vaccine and less likely caused by any of the COVID-19 Vaccine Recipient’s other circumstances.

COVID-19 Vaccine Related Harm means a clinical condition developed by the COVID-19 Vaccine Recipient:

a) that is diagnosed by a Treating Practitioner; and

b) is included in:

1. *the Product Information in relation to the COVID-19 Vaccine received by the COVID-19 Vaccine Recipient; and*
2. *Table 1 below but only if the clinical condition referred to in column 1 results from the COVID-19 Vaccine referred to in the same row in column 2; and*

c) was most likely caused by the COVID-19 Vaccine and less likely caused by any of the COVID-19 Vaccine Recipient’s other circumstances

	Column 1	Column 2
Item	Clinical condition	Person in whose name an Applicable COVID-19 Vaccine(s) is included in the Register
1	Anaphylactic reaction	AstraZeneca Pty Limited Pfizer Australia Pty Limited Moderna Australia Pty Limited Bioelect Pty Ltd (for registration of Novavax vaccine)
2	Thrombosis with Thrombocytopenia Syndrome	AstraZeneca Pty Limited
3	Myocarditis	Pfizer Australia Pty Limited Moderna Australia Pty Limited
4	Pericarditis	Pfizer Australia Pty Limited Moderna Australia Pty Limited
5	Capillary leak syndrome	AstraZeneca Pty Limited
6	Demyelinating disorders including Guillain Barre Syndrome (GBS)	AstraZeneca Pty Limited
7	Thrombocytopenia, including immune Thrombocytopenia, identified as a final diagnosis	AstraZeneca Pty Limited

Note: Further clinical conditions may be added to this Table by amendment if new clinical conditions are added to the Product Information for the specific COVID-19 Vaccine and when verified by the Therapeutic Goods Administration as a serious clinical condition to be covered by the Scheme.

Who is not eligible for compensation?

The following harm is not covered under the Scheme:

- contracting COVID-19;
- psychological and psychiatric conditions;

- secondary injuries, like an injury suffered when fainting, or a haematoma where you were injected that becomes infected; and
- side effects, including but not limited to, headache, fatigue, injection site reaction, muscle or joint pain, dizziness, nausea or vomiting, rash, anxiety-related reactions and more.

You can view more detailed information about eligibility on the [Services Australia page here](#).

What compensation is payable under the Scheme?

The compensation payable is determined by the category under which you apply. There are three categories; Tier 1 and Tier 2 for claimants who have suffered injury and Tier 3 for claims by the estate (or representative) of someone who has died as a result of the COVID vaccine.

If you meet the above eligibility requirements, you will be eligible to claim compensation for any of the following costs:

- pain and suffering costs (up to 25% of your no-fault compensation for Tier 1 claimants and up to \$693,500 for Tier 2 claimants);
- loss of weekly earnings, past and future;
- out of pocket expenses (for consultations with treatment providers, medication, medical aids, medical appliances and reasonable travel and accommodation expenses incurred in connection with receiving treatment);
- paid attendant care services;
- gratuitous attendance care (for more than 6 hours per week for at least 6 months in a row);
- loss of capacity to provide domestic services; and
- deceased COVID-19 vaccine recipient payments, dependency and funeral costs.

You must produce evidence that you have experienced losses more than \$1,000.

For losses of \$20,000 or more, Services Australia anticipates claims will take longer to assess as the Department will most probably need to consult medical or legal experts.

You **cannot** recover the following under the Scheme:

- legal costs or expenses in connection a claim and/or receipt of compensation;
- costs associated with obtaining advice;
- costs that are not out of pocket expenses; or
- interest on any compensation.

For further information, visit [Services Australia COVID-19 vaccine claims – what costs you can claim](#) page.

How do I claim?

To make a claim you need:

1. proof you were admitted to hospital – your doctor needs to complete the [COVID-19 vaccine claims scheme medical report](#);
2. proof of calculation of the amount you are claiming; and
3. proof to support the amount you are claiming.

If you were not admitted to hospital but should have been, you may need to seek a waiver. You will only be eligible for a waiver if:

1. you have suffered one of the 7 clinical conditions (listed in Table 1 **above**);
2. you were in a rural or remote area at the time the harm was suffered, making it difficult to access a hospital; and/or
3. you received treatment most likely related to the harm in an outpatient care setting under the supervision of a treating specialist or physician.

A waiver **may not** be granted if you only suffered **vaccine administration related harm**.

You can submit your claim and supporting documents via Medicare online or you can submit an [Application form \(MO062\)](#) with Services Australia.

Only one claim can be made in relation to each COVID-19 vaccine recipient unless the harm suffered by that person:

1. significantly worsens; and/or
2. 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.

The Decision Maker (a delegate of the Secretary of the Department) will determine each claim to their satisfaction and may seek further information or evidence prior to making a decision. A determination of claims will be provided in writing.

We recommend seeking legal advice should an offer of compensation under the Scheme be made. Once you have settled/accepted a determination, you cannot “go back for more” unless either of the two criteria above exist. It’s important that your original claim is thoroughly formulated to include **all** losses you have incurred.

What if I also claim workers compensation for a vaccine-related injury?

If you have an accepted claim for workers’ compensation benefits and receive those benefits within 6 months to 2 years after accepting an offer of compensation for the same harm under the Scheme, you may be required to repay the Commonwealth (from the proceeds of your compensation claim), the whole or part of the amount paid under the Scheme.

If you have received workers compensation benefits prior to an offer of compensation, those benefits will be deducted from the compensation offered under the Scheme.

What if my claim for compensation under the Scheme is rejected?

If compensation is not payable under the Scheme in respect of your claim, or if prior to compensation being accepted and the settlement deed executed, you are dissatisfied with the amount of compensation determined by the Decision Maker, you can submit an Application for Review to Services Australia:

1. within 6 months of an offer of compensation being made; or
2. on or before the end date, which is 2 years after the COVID-19 Biosecurity Emergency (declared by the Government) ceases to be in force.

If you have received an offer of compensation and you have not accepted that offer **within 6 months**, in writing, after the offer is made, you are deemed to have declined the offer, thereby ceasing your claim.

You may submit further evidence or information in support of your claim **within 28 days of applying for review**.

The [policy](#) states that a Decision Maker:

“who is of a higher level in the public service than the original Decision Maker... will be the Decision Maker on Review”.

That decision of a senior delegate in Services Australia will supersede and replace the original decision, regardless of whether it results in a more or less favourable outcome for the claimant.

Claimants should be aware that once a determination is made by the higher-level Decision Maker on Review, the claimant **will not** be permitted to make any further claims under the Scheme in respect of the same harm and will not be able to apply for a further Review.

You can find more information about the [COVID-19 vaccine claims scheme](#), [policy](#) and [privacy policy](#) on the Department of Health and Services Australia websites.

Get help

It is critical that if you have suffered economic loss (past and future) as a result of an adverse reaction to a COVID vaccine, that you seek legal advice early. Your entitlement to any compensation under the COVID-19 Vaccine Claim Scheme differs significantly, dependent on whether you are categorised as a Tier 1 or Tier 2 claimant.

Contact our injury compensation team to discuss your options or to start your claim.

Contacting Hall Payne Lawyers

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

Phone: [1800 659 114](tel:1800659114)

Email: general@hallpayne.com.au

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