Lawyers for the People
AUSTRALIAN LAWYERS ALLIANCE

Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 – PIPA, WCRA and LPA claims farming

Submission to the Legal Affairs and Safety Committee

22 April 2022

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Contents

Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.[1]

The ALA office is located on the land of the Gadigal of the Eora Nation.

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[1] www.lawyersalliance.com.au.

Introduction

The ALA welcomes the opportunity to provide submissions in respect of the *Personal Injuries Proceedings and Other Legislation Amendment Bill 2022* ("the Bill*")* and specifically the proposed amendments to the *Personal Injuries Proceedings Act 2002* ("*PIPA*"), *Workers Compensation and Rehibition Act 2003* ("WCRA") and *Legal Profession Act 2007* ("LPA") to address actual or potential claims farming behaviour in the sectors governed by each legislation.

We also welcome the opportunity to provide submissions in relation to changes to provisions impacting terminal illness claims and in particular that the retrospectivity of this proposal will also have a significant effect on common claims already commenced in Queensland courts for workers with Terminal Conditions.

The ALA has a strong record of calling out claims farming activities and was actively engaged with the process of the amendments in the Compulsory Third Party ("CTP") scheme, and have been actively engaged in the process regarding the amendments proposed in the Bill in the consultation process on this Bill to date.

Whilst the ALA supports measures to curtail claims farming, and hence supports the principle of expansion of current legislation, the new provisions needs to be workable at a practical level and not impede access to justice. The current provisions create a minefield of requirements for practitioners to provide law practice certificates ("LPCs") and that is neither practical, nor ultimately necessary. Unfortunately, the current iteration of the Bill was not shared with key stakeholders including the ALA, prior to being brought to the Parliament.

It is imperative that these amendments be reconsidered, as in their current form they will impose arduous requirements upon practitioners. Those requirements will add to administrative burdens, and ultimately to the cost of pursuing actions. Those burdens will be an impediment to access to justice for the clients of ALA's members.

Law Practice Certificates

With the passage of this Bill, Law Practice Certificates will be required to be given across each of the MAIA, WCRA and PIPA. This covers nearly all personal injury claims in Queensland

The ALA has serious concerns in relation to the requirements to Law Practice Certificates. We support the need for them, but suggest simplicity is needed to avoid genuine errors and the resultant burden of same. The concerns include:

1. The need to give multiple Law Practice Certificates at many different times;
2. The failure to consider how this will operate for claimants with claims across the different personal injury legislative schemes;
3. The unnecessary and unreasonable complexity in the requirements under ss.325H, I and J of the *WCRA*.

Hybrid claims are those which involve claims under both the *WCRA* and *PIPA*. The most common example of such a claim is the labour hire/host placement scenario, where a labour hire worker is placed with a third party for a period of time (e.g. on construction sites, large events, temporary workers). In these cases the injured person would have a personal injury claim under the *WCRA* against their employer, the labour hire agency, and a separate public

liability claim against the host under the *PIPA*. Another scenario is where someone is injured in a car accident to or from work. In this scenario, the person will maintain a CTP claim under the *MAIA*, and may also pursue a workers' compensation statutory claim under the *WCRA*.

Public liability claims under the PIPA can often have multiple respondents. For example, someone injured in the construction industry can often have a workers' compensation statutory and common law claim against their employer, and also have a PIPA claim against a head contractor and multiple sub-contractors. Having 2, 3 or 4 respondents in such scenarios is not uncommon.

We have compiled an example list of scenarios as to how the current Bill operates practically in requiring the giving of Law Practice Certificates. That list is annexed **(Annexure A)** to this submission. This list is not exhaustive. It demonstrates the sheer complexity and unreasonableness of the administrative burden being created by the current drafting. This list has been shared with the QLS for their observations in submissions to this Committee.

To simplify the Law Practice Certificate requirements under the *WCRA*, the ALA recommends the giving of the Certificate when a damages claim is commenced, or when a lump sum offer is accepted by a claimant who has retained a lawyer, or if the claimant has already commenced a damages claim when they retain a lawyer, within 1 month of retaining the lawyer.

These scenarios will adequately target the key steps within the claims process where claims farmers may operate. The claims farming model is such that they will target those people who may have an amount of money paid to them either in the statutory claim or the damages claim. To require a Law Practice Certificate for all statutory claims is a heavy and unnecessary burden, with no tangible benefit. Approximately 91,000 statutory claims are lodged in Queensland per year, with about 3% (roughly 3,000) progressing to common law damages claims.[2] The percentage of the total statutory claimants who do retain a lawyer during their statutory claim is not known, but even if this was just 10%, that would amount to some 9,100 Law Practice Certificates being required to be given to the Regulator. The administrative burden of this is excessive and risks weakening the regulatory and enforcement function of the Regulator.

The provision of a Law Practice Certificate at the acceptance of a lump sum payment could easily be achieved by:

1. Requiring a Law Practice Certificate to be given with the claimant's completed Notice of Assessment accepting the lump sum payment;
2. Ensuring the Law Practice Certificate is incorporated as part of the Notice of Assessment by all insurers;
3. Asking the claimant to confirm, in the Notice of Assessment acceptance of lump sum form whether they are legally represented.

The ALA understands that consideration is being given to the creation of one Law Practice Certificate which can be used across each of the personal injury schemes. This is an urgent priority. We fully support this for the sake of administrative simplicity for both lawyers and the three regulators. As with claims under the *MAIA*, where the Law Practice Certificate is incorporated into the Notice of Accident Claim form, we would urge the inclusion of the Law Practice Certificate in each of the initial notices required under the *WCRA* and *PIPA*. This will reduce unintentional and genuine errors.

[2] https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0017/71414/queensland-workers-compensation-scheme-statistics-2019-20_A4_18Dec20-1.pdf

Finally, to assist with cohesion and simplicity among the *WCRA*, *PIPA* and *MAIA*, the ALA would support an amendment to each Act which would permit a copy of an original Law Practice Certificate, given under one Act, to be given under an analogous provision of another Act. The present requirements under the existing MAIA framework, in conjunction with the proposed amendments to the *PIPA* and *WCRA*, are such that in multi-party claims or hybrid claims (as explained above) there would be a need to provide a fresh Law Practice Certificate at each step and against each respondent under each piece of applicable legislation. This can be achieved by a new provision in each of the *WCRA*, *PIPA* and *MAIA*, along the lines of our suggestion during the preliminary consultation stage, namely:

1. If the claimant has already given a Law Practice Certificate under the *WCRA*/*PIPA/MAIA*; and
2. That certificate was given in respect of the same factual circumstances causing the injury claimed for – i.e. the same claim, rather than a Certificate for a CTP claim and a separate *WCRA*/*PIPA* claim; and
3. The Certificate was given by the same law practice; then,
4. Providing a copy of that Law Practice Certificate to the claimant and insurer/respondent is sufficient discharge of the requirements under the analogous provisions of the other Acts.

Amendments to LPA

The ALA supports the intent of the amendments to the application of what is colloquially referred to as the 50/50 rule. The purpose of the amendments is to prevent undesirable billing practices which disguise claim farming activity.

Lawyers do not, as a matter of course, apply the 50/50 rule in all matters. The rule is an upper limit, not a contingency fee. The regulatory, professional standing and reputational consequences of overcharging are severe, and a range of consumer protection mechanisms exist to which claimants can have recourse if they are concerned about lawyers' costs. The 50/50 rule is a safety mechanism which ensures that a client must receive in the hand at least as much as their lawyer charges in legal fees after deduction of statutory refunds and disbursements.

Section 347(8)(a)(i) deals with payments to third party entities for the preparation of statements or obtaining of instructions, which can be used by claims farmers to disguise a referral fee (payment of consideration as termed under the claims farming provisions). An exception however is made for payments to barristers, correctly so, given the important strategic role barristers play throughout the course of many personal injury claims. However, the exception in s.347(8)(b), as currently worded, only applies to work done by a barrister under the *PIPA*. This is obviously a drafting error, as barristers conduct work across each of the *PIPA*, *WCRA* and *MAIA*, and the amended in the *LPA* applies across each of these schemes.

We would, accordingly, recommend that s.347(8)(b) remove the words from "…after a notice…".

Sections 347(8)(a)(ii) and (ii) mean that interest on disbursements (whether through a disbursement funder or via a law practice's credit facility) will be required to be borne by the law practice. Practically this means interest on disbursements will not be taken into account

in calculating the 50/50 rule, but that after this is done, the interest on disbursements is then to be deducted from the lawyer's charge.

Law practices fund disbursements throughout personal injury claims, which on average have a duration of 2 to 3 years, most often through their own overdraft or other credit facility, or alternatively via a disbursement funder. Interest rates on these various credit options vary greatly. Whilst some members of the ALA hold concerns as to the fairness of this amendment, it is also understood that this is a cost of doing business. Some ALA members already bear this cost of funds themselves, that is do not on-charge the interest to their clients. The ALA however supports such an amendment which will assist in addressing claim farming activity, and also lead to some injured claimants retaining a greater portion of their settlement money in circumstances where the 50/50 rule is to be applied.

The *LPA* is also proposed to be amended to provide sweeping new powers to the Legal Services Commission. This is in similar style to those powers under the existing arrangements dealing with claim farming under the *MAIA*. The ALA understands that the Queensland Law Society maintains its strong views against the breadth of those investigatory powers, as it had expressed when the analogous provisions in the *MAIA* were introduced.

The ALA is concerned that such broad investigatory powers under Chapters 5A and 6A of the *LPA* are sought to be extend also to cover the advertising restrictions contained within the *PIPA*. The conduct of claims farmers can hardly be compared to conduct relating to advertising of personal injury services. Therefore, given the concerns of the QLS as to the unreasonable and unnecessarily extensive powers to deal with the insidious conduct of claims farmers, the ALA holds great concern that such powers would be used to deal with the advertising restrictions under the *PIPA*. There is simply no cogent reason why the Legal Services Commission cannot use its existing powers to deal with such matters.

In respect of personal injury advertising restrictions which exist in Chapter 3, Part 1 of the *PIPA*, the ALA is strongly opposed to these restrictions continuing to be applied against a subset of the legal profession, being our members No other lawyers are subject to such restraint of trade.

The present PIPA-based advertising restrictions are not only unfair and an impediment to injured and unwell people learning of their legal rights, they are ineffective and unfit for the modern internet world. The LSC has, rightly, acknowledged by not pursuing multiple clear breaches of those restrictions, that the provisions have no contemporary untility. The majority of Australian States and Territories do not have such restrictions, and in the last few years NSW abandoned their earlier adoption of such restrictions. Of course, taste and ethics-based restrictions have long existed in all Australian jurisdictions. Those are sufficient to address any emergent advertising conduct.

The advertising restrictions are anachronistic and it is time that they be removed. Amending the current Bill is an opportune and appropriate time for that to occur, and for the LSC's time and resources to then be devoted to pursuing claims farming activities.

Functioning of the regulators

The ALA considers that having three separate entities (namely the LSC, OIR and MAIC) each with separate and siloed prosecutor powers could lead to inefficiencies and reduced effectiveness in ensuring the legislation is adhered that prosecutions are made effectively.

There are serious concerns with having 3 Regulatory agencies and the prospect of how multi-scheme (hybrid) matters are monitored, investigated and prosecuted.

It is of utmost importance that these agencies need to be properly resourced, and due consideration needs to be given to processes for information sharing. If the practical outcome is that each agency operates in isolation (siloed effect) then there will be significant inefficiencies and costs added to all schemes and the overall processes and this needs to be avoided.

If these three agencies do not 'work together' and have an inconsistent approach to investigations, there will be missed opportunities for prosecution and both anticipating future claims farming conduct as well as responding to known activities.

Overall, if strategy is not well thought through and executed across the three agencies then the concern is it could ultimately unintentionally feed claims farming behaviour. Significant thought needs to be given to the planning and execution of strategy across the three agencies to adequately enforce these provisions.

A review of how the three agencies are operating in approximately 3 years is suggested so that the effectiveness of this model can be assessed and reconsidered if necessary.

Terminal Illness Claims

On 25 February 2022, the Australian Lawyers Alliance provided submissions regarding the proposed further amendments to section 39A of the *Workers Compensation and Rehabilitation Act 2003* (Qld) (the **WCRA**) in respect of Terminal Condition lump sum benefits (**Terminal Benefits**), pursuant to Part 3, Division 4 of the WCRA.

In summation, our recommendation at that time was that if amendments are to be made to section 39A of the WCRA to impose a strict life expectancy test, than a five (5) year life expectancy requirement be introduced as opposed to three (3) years.

This recommendation was made to reflect the unreasonable and unfair outcomes that will result from these amendments for many Queensland workers suffering from progressive forms of lung disease (including mesothelioma, asbestosis, progressive massive fibrosis, silicosis, coal workers' pneumoconiosis and silica induced auto-immune diseases) and other occupationally acquired cancers.

The Office of Industrial Relations has now provided a copy of the draft terminal illness compensation provisions, which provides, *inter alia*:

The former section 39A definition relating to injuries sustained before 1 January 2015 is to be restored, with the two (2) year requirement extended to three (3) years (the **Proposed New Section 39A**);

The Proposed New Section 39A is to apply retrospectively to all injuries sustained on or after 31 January 2015 (the **Proposed Commencement Date**) and apply to a claim even if:

(a) an insurer allowed an application for Terminal Benefits, but the worker or the worker's dependents had not yet received the Terminal Benefits;
(b) an insurer accepted a doctor's diagnosis of the terminal nature of the worker's condition, but the worker or the worker's dependents had not yet received the Terminal Benefits;

(c) a review relating to a claim for Terminal Benefits had been started pursuant to Chapter 13 of the WCRA, but had not been decided.

We welcome the opportunity to provide further submission in relation to the draft terminal compensation provisions, which are set out hereinbelow.

Submission with respect to the Proposed New Section 39A

We do not intend to reiterate the contents of our submission dated 25 February 2022 which related to this issue, save as to say that we do not consider the introduction of a three (3) year life expectancy test is in keeping with the overarching purpose of the WCRA. In this regard, we refer to and rely upon our previous submission addressing these matters as provided on 25 February 2022.

Submission with respect to the Proposed Commencement Date

The draft terminal compensation provisions provide that the Proposed New Section 39A is to relate to injuries sustained on or after 31 January 2015, for any claim in which Terminal Benefits have not already been paid or reviews that have not already been decided.
This is bad law. Three reasons follow.

First, the Proposed Commencement Date will retrospectively abolish many Queensland worker's entitlements to Terminal Benefits as those entitlements can and should be determined under the current iteration of section 39A. Retrospective laws are unjust, unfair and unreasonable. As a matter of basic principle, this should not be permitted to stand.

Second, the application of the Proposed Commencement Date and substance of new section 704 (as it has been drafted) will mean that workers that have incurred costs (often significant) associated with medical expert opinions and related legal advice incurred seeking Terminal Benefits under the WCRA, including matters currently the subject of review with the Workers Compensation Regulator, will have these costs thrown away. Indeed, not only will the Proposed Commencement abolish their entitlements to Terminal Benefits, but it will also throw away the costs that these workers have incurred in legitimately and reasonably pursuing their entitlements pursuant to the current law as clarified by the decision of *Blanch v Workers' Compensation Regulator* [2021] QIRC 408.

Third, the retrospectivity of this proposal will also have a significant effect on common claims already commenced in Queensland courts for workers with Terminal Conditions.

In this regard, we note that section 238 of the WCRA carves-out a number of requirements of Chapter 5 of the WCRA (i.e. the "pre-court" procedures) for workers suffering from a terminal condition (as defined) that are seeking to access damages. That is, section 238 of the WCRA allows workers with a terminal condition to advance a claim for common law damages without serving a Notice of Claim for Damages or attending a Compulsory Conference, to avoid undue delay. Many workers with Terminal Conditions have utilised this provision to speed up their claims and save costs, for self-evident reasons.

However, by retrospectively applying the Proposed Commencement Date (as presently defined), common law actions already filed in the Courts pursuant to section 238 of the WCRA, may potentially be retrospectively rendered invalid and liable to be struck out or stayed. In some cases, this may even mean that workers entitlements would be quashed by limitation periods due to the Proposed Commencement Date. This would evidently immensely prejudice workers and their families.

For these three reasons, we submit that it is only fair, reasonable and appropriate for the Proposed Commencement Date to be 1 July 2022, so that workers diagnosed with Terminal Conditions before this time who have taken steps to access their benefits under the current iteration of the law are not unfairly impacted by these proposed retrospective changes in the law.

To appropriately illustrate these points, we note the following case examples of individuals that will be significantly prejudiced if these retrospective changes were to be made:

Example 1:

A 70-year-old underground miner has been diagnosed silicosis, progressive massive fibrosis, silica-related chronic obstructive pulmonary disease and silica-related emphysema. His condition is expected to terminate his life in approximately nine (9) years, reducing his overall life expectancy by five (5) years in total. There are no relevant co-morbidities.

This workers' claim was denied by the workers compensation (self) insurer on the basis that his death is not 'imminent'. The worker has incurred expenses and legal costs in appealing the decision, which is presently pending before the Workers Compensation Regulator.

If the retrospective Terminal Condition is applied, then his appeal will ultimately fail due to the law moving beneath his feet and he will have significant costs thrown away relating to the Appeal.

Example 2:

A 55-year-old miner has been diagnosed with a progressive autoimmune condition subsequent to silica exposure. His condition is expected to terminate his life in approximately 10 years.

As his condition is not a defined 'dust-related injury', the usual limitation period for personal injury claims applied to his claim.

Pursuant to section 238 of the WCRA, due to his Terminal Condition, the worker has bypassed the pre-court procedures set out in the WCRA and file his action directly in the Supreme Court of Queensland.

If the retrospective Terminal Condition is applied, then the argument may arise that this workers' proceeding is nullified due to non-compliance with the pre-court procedures due to the retrospective amendment to the definition of Terminal Condition. If this was the case, then the retrospective application may see this workers' cause of action against his employers statute barred as it is not a dust-related injury (as defined).

Example 3:

A 71-year-old underground miner has been diagnosed with silicosis, resected silica-related squamous cell carcinoma of the lung and silica-related emphysema. His condition is expected to terminate his life in approximately five (5) years. There are no relevant co-morbidities.

This workers' claim was denied by the workers compensation (self) insurer on the basis that his death is not 'imminent'. To challenge this rejection in light of *Blanch* the worker has

incurred expenses and legal costs in appealing the decision, which is presently pending before the Workers Compensation Regulator.

If the retrospective Terminal Condition is applied, then his appeal will ultimately fail due to the law moving beneath his feet and he will have costs thrown away relating to the Appeal.

Example 4:

A 86 year former underground miner has been diagnosed with diffuse dust fibrosis. His condition is expected to terminate his life in 4 years.

This workers' claim was denied by the workers compensation (self) insurer on the basis that his death is not 'imminent'. The worker has incurred expenses and legal costs in appealing the decision before the Workers Compensation Regulator and now with proceedings pending before the Queensland Industrial Relations Commission.

If the retrospective Terminal Condition is applied, then his appeal will ultimately fail due to the law moving beneath his feet and he will have significant costs thrown away relating to his appeals with the Regulator and the QIRC.

Example 5:

A 31 year former stonemason with three young children has been diagnosed with silicosis (and severe secondary psychological injury). Medical evidence from two independent experts has indicated that although the worker does not yet have Progressive massive Fibrosis (**PMF**)(the advanced form of silicosis), he has all the hallmarks that his silicosis is progressive and at some in the next 10-15 years will progress to PMF.

Pursuant to section 238 of the WCRA, due to his Terminal Condition, the worker has bypassed the pre-court procedures set out in the WCRA and file his action directly in the Supreme Court of Queensland.

If the retrospective Terminal Condition is applied, then the argument may arise that this workers' proceeding is nullified due to non-compliance with the pre-court procedures due to the retrospective amendment to the definition of Terminal Condition. If this was the case, then the retrospective application may see this workers' claim be forced back into the pre-court procedure and have his costs thrown away of pursuing his (wholly legitimate) Supreme Court action to date.

When considering the basic fairness of retrospective laws, we believe that an apt comparison can be made to changes introduced by the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015*, which restored workers access to common law damages by reversing the changes made to the Queensland Workers Compensation Scheme in 2013, commonly referred to as the Newman Act amendments.

The *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015* restored the rights of workers from 31 January 2015 by abolishing the 5% DPI "gateway" for workers to access common law damages. However, for injuries sustained between 15 October 2013 and 31 January 2015, the law in place at that time remained and workers who, unfortunately, sustained an injury during this period, still had to meet the 5% threshold. In that way, even the reversal of the Newman Act changes were not retrospective.

Submission regarding a counter-proposal for the wording of new Section 39A

We propose that section 39A of the WCRA be amended to the following:

(1) In relation to a condition that is a latent onset injury sustained by a worker before 31 January 2015:

a. A terminal condition, of a worker, is a condition certified by a doctor as being a condition that is expected to terminate the worker's life within 2 years after the terminal nature of the condition is diagnosed.

b. A condition is a terminal condition only if the insurer accepts the doctor's diagnosis of the terminal nature of the condition.

(2) In relation to a condition that is a latent onset injury sustained by a worker after 31 January 2015 and before 1 July 2022:

a. A terminal condition, of a worker, is a condition certified by a doctor as being a condition that is expected to terminate the worker's life.

b. A condition is a terminal condition only if the insurer accepts the doctor's diagnosis of the terminal nature of the condition.

(3) In relation to a condition that is a latent onset injury sustained by a worker after 1 July 2022:

a. A terminal condition, of a worker, is a condition certified by a doctor as being a condition that is expected to terminate the worker's life within five (5) years after the terminal nature of the condition is diagnosed.

b. A condition is a terminal condition only if the insurer accepts the doctor's diagnosis of the terminal nature of the condition.

Other ancillary matters

The definition of "claim farming provision" throughout the Bill incorrectly references "chapter 2, part 1, division 1A" of the *PIPA*. The correct reference ought to be "division 1AA" of the *PIPA*.

s.325Q(2) of the *WCRA* – can you please complete – the example at this section needs to be consistent with s.70(2) *PIPA* and s.74(4)(b) *MAIA*.

Conclusion

The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022: WCRA, PIPA and LPA.

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Australian Lawyers Alliance

Annexure *"A"*

Law Practice Certificate scenarios – when to be given at claim commencement

This scenario list does not include the giving of a Law Practice Certificate in the following circumstances:

a. on settlement;
b. in a hybrid matter which may have an *MAIA* component (this type of claim being quite rare);
c. on sale of part of all of a law practice; and
d. on waiver or deemed compliance

Workers' compensation claims

1. New client on statutory benefits

a. If costs agreement limited to damages only –

i. give LPC to client before commencing damages claim: s.325H; **AND**

ii. LPC must be given with NOCD or UNOCD: s.275(7A)

b. If costs agreement encompasses statutory and damages claims –

i. Give LPC to client within 1 month of being retained: s.325I(3)(b); **AND**

ii. Give LPC to insurer with the NOCD or UNOCD: s.275(7A); **AND**

iii. If a direction re lump sum signed and given to insurer – give that LPC to the insurer with the direction: s.325J(2)

2. New client not yet lodged statutory claim –

a. If costs agreement limited to damages only –

i. give LPC to client before commencing damages claim: s.325H; **AND**

ii. LPC must be given with NOCD or UNOCD: s.275(7A)

b. If costs agreement encompasses statutory and damages claims –

i. Give LPC to client and insurer within 1 month of lodging application for compensation: s.325I(3)(a); **AND**

ii. Give LPC to insurer with the NOCD or UNOCD: s.275(7A); **AND**

iii. If a direction re lump sum signed and given to insurer – give that LPC to the insurer with the direction: s.325J(2).

3. New client self-represented already commenced damages claim – give LPC to client and insurer within 1 month of being retained: s.325I(3)(b).

4. New client lump sum only claim (if s.325I doesn't apply, because if it does conceivably an LPC is also required under that section) –

- **a.** give LPC to insurer with the payment direction AND to the client: s.325J(2); **OR**
- **b.** if an LPC hasn't been given when the lump sum is paid direct to claimant and a law practice is retained – LPC to be given to the insurer and client within 7 days of the lump sum payment being made to the claimant: ss.325J(6) & (7).

5. New client – notice of assessment already received – instructed for damages claim –

- **a.** give LPC to client before commencing damages claim: s.325H; **AND**
- **b.** LPC must be given with NOCD or UNOCD: s.275(7A).

6. New client – assisting with Regulator review –

- **a.** Give LPC to client within 1 month of being retained: s.325I(3)(b); **AND**
- **b.** If a direction re lump sum signed and given to insurer – give that LPC to the insurer with the direction: s.325J(2); **OR**
- **c.** If no direction, but later client accepts lump sum (whether 20% DPI or not) - LPC to be given to the insurer and client within 7 days of the lump sum payment being made to the claimant: ss.325J(6) & (7); **AND**
- **d.** If statutory claim accepted and damages pursued – give LPC to insurer with the NOCD or UNOCD: s.275(7A).

7. Prospective matter – i.e. not formally retained, but assisting with lodging application for compensation or a Regulator review –

- **a.** If not retained (i.e. costs agreement entered into) – then no LPC is required to be given.

8. Transferred client on statutory benefits –

- **a.** If costs agreement limited to damages only –
  - **i.** give LPC to client before commencing damages claim: s.325H; **AND**
  - **ii.** LPC must be given with NOCD or UNOCD: s.275(7A).
- **b.** If costs agreement encompasses statutory and damages claims –
  - **i.** Give LPC to client within 1 month of being retained: s.325I(3)(b); **AND**
  - **ii.** Give LPC to insurer with the NOCD or UNOCD: s.275(7A); **AND**
  - **iii.** If a direction re lump sum signed and given to insurer – give that LPC to the insurer with the direction: s.325J(2).

9. Transferred client already commenced damages claim – give LPC to client and insurer within 1 month of being retained: s.325I(3)(b).

PIPA claims

10. New client not yet lodged a claim –

a. Give LPC to client before a Notice of Claim or initial notice (for medical matters) is given: s.8C(2); **AND**

b. LPC must be given with the Notice of Claim or initial notice (for medical matters – note another LPC is not required once a Notice of Claim is later given): ss.9(2) and 9A(3A).

11. New client already commenced claim (either self-represented or changing lawyers) – LPC to be given to respondent(s) within 1 month of being retained: s.9C. This section doesn't require the LPC be given to the client, though one would imagine it should be.

12. Existing client, claim commenced, but a new Notice of Claim issued to a new respondent (for every new respondent) –

a. Give LPC to client before a Notice of Claim: s.8C(2); **AND**

b. LPC must be given with the Notice of Claim: s.9(2)

Hybrid claims

13. Hybrid PIPA/WCRA – new client on statutory benefits –

a. If costs agreement limited to WCRA damages only –

i. LPC under PIPA –

1. Give LPC to client before commencing claim: s.8C; **AND**

2. LPC must be given with initial notice (one for each respondent that may be included over time): ss.9(2)(c) and 9A(3A); **AND**

ii. LPC under WCRA –

1. Give LPC to client before commencing damages claim: s.325H; **AND**

2. LPC must be given with NOCD or UNOCD: s.275(7A)

b. If costs agreement encompasses statutory and damages claims –

i. LPC under PIPA –

1. Give LPC to client before commencing claim: s.8C; **AND**

2. LPC must be given with initial notice (one for each respondent that may be included over time): ss.9(2)(c) and 9A(3A); **AND**

ii. LPC under WCRA –

1. Give LPC to client within 1 month of being retained: s.325I(3)(b); **AND**

2. Give LPC to insurer with the NOCD or UNOCD: s.275(7A); **AND**

3. If a direction re lump sum signed and given to insurer – give that LPC to the insurer with the direction: s.325J(2)

14. Hybrid PIPA/WCRA – new client not yet lodged statutory claim –

a. If costs agreement limited to WCRA damages only –

i. LPC under PIPA –

1. Give LPC to client before commencing claim: s.8C; **AND**

2. LPC must be given with initial notice (one for each respondent that may be included over time): ss.9(2)(c) and 9A(3A); **AND**

ii. LPC under WCRA –

1. give LPC to client before commencing damages claim: s.325H; **AND**

2. LPC must be given with NOCD or UNOCD: s.275(7A)

b. If costs agreement encompasses statutory and damages claims –

i. LPC under PIPA –

1. Give LPC to client before commencing claim: s.8C; **AND**

2. LPC must be given with initial notice (one for each respondent that may be included over time): ss.9(2)(c) and 9A(3A); **AND**

ii. LPC under WCRA –

1. Give LPC to client and insurer within 1 month of lodging application for compensation: s.325I(3)(a); **AND**

2. Give LPC to insurer with the NOCD or UNOCD: s.275(7A); **AND**

3. If a direction re lump sum signed and given to insurer – give that LPC to the insurer with the direction: s.325J(2)

15. Hybrid PIPA/WCRA – client self-represented –

a. Started both WCRA and PIPA claims –

i. give an LPC to the client and respondent within 1 month of being retained: s.9C PIPA; **AND**

ii. give LPC to client and insurer within 1 month of being retained: s.325I(3)(b) WCRA.

b. Started PIPA claim, but still on statutory benefits –

i. give an LPC to the client and respondent within 1 month of being retained: s.9C PIPA; **AND**

ii. if costs agreement limits WCRA to damages –

1. give LPC to client before commencing damages claim: s.325H; **AND**

2. LPC must be given with NOCD or UNOCD: s.275(7A); **OR**

iii. if costs agreement encompasses WCRA statutory and damages claims –

1. Give LPC to client within 1 month of being retained: s.325I(3)(b); **AND**

2. Give LPC to insurer with the NOCD or UNOCD: s.275(7A); **AND**

3. If a direction re lump sum signed and given to insurer – give that LPC to the insurer with the direction: s.325J(2).

c. Started PIPA claim, but not yet lodged statutory claim –

i. give an LPC to the client and respondent within 1 month of being retained: s.9C PIPA; **AND**

ii. If costs agreement limited to damages only –

1. give LPC to client before commencing damages claim: s.325H; **AND**

2. LPC must be given with NOCD or UNOCD: s.275(7A); **OR**

iii. If costs agreement encompasses statutory and damages claims –

1. Give LPC to client and insurer within 1 month of lodging application for compensation: s.325I(3)(a); **AND**

2. Give LPC to insurer with the NOCD or UNOCD: s.275(7A); **AND**

3. If a direction re lump sum signed and given to insurer – give that LPC to the insurer with the direction: s.325J(2)

16. Hybrid PIPA/WCRA – new client – NOA already received – instructed for damages claim –

a. LPC for PIPA –

i. Give LPC to client before commencing claim: s.8C; **AND**

ii. LPC must be given with initial notice (one for each respondent that may be included over time): ss.9(2)(c) and 9A(3A); **AND**

b. LPC for WCRA –

i. give LPC to client before commencing damages claim: s.325H; **AND**

ii. LPC must be given with NOCD or UNOCD: s.275(7A).

17. Hybrid PIPA/WCRA – new client – assisting with Regulator review –

a. LPC for PIPA –

i. Give LPC to client before commencing claim: s.8C; **AND**

ii. LPC must be given with initial notice (one for each respondent that may be included over time): ss.9(2)(c) and 9A(3A); **AND**

b. LPC for WCRA –

i. Give LPC to client within 1 month of being retained: s.325I(3)(b); **AND**

ii. If a direction re lump sum signed and given to insurer – give that LPC to the insurer with the direction: s.325J(2); **OR**

iii. If no direction, but later client accepts lump sum (whether 20% DPI or not) - LPC to be given to the insurer and client within 7 days of the lump sum payment being made to the claimant: ss.325J(6) & (7); **AND**

iv. If statutory claim accepted and damages pursued – give LPC to insurer with the NOCD or UNOCD: s.275(7A).

18. Hybrid PIPA/WCRA – transferred client on statutory benefits and commenced PIPA claim –

a. LPC on PIPA – give an LPC to the client and respondent within 1 month of being retained: s.9C PIPA; **AND**

b. If costs agreement limited to WCRA damages only –

i. give LPC to client before commencing damages claim: s.325H; **AND**

ii. LPC must be given with NOCD or UNOCD: s.275(7A).

c. If CA encompasses statutory and damages claims –

i. Give LPC to client within 1 month of being retained: s.325I(3)(b); **AND**

ii. Give LPC to insurer with the NOCD or UNOCD: s.275(7A); **AND**

iii. If a direction re lump sum signed and given to insurer – give that LPC to the insurer with the direction: s.325J(2).

19. Hybrid PIPA/WCRA – transferred client commenced both PIPA and WCRA damages claims –

a. LPC on PIPA – give an LPC to the client and respondent within 1 month of being retained: s.9C PIPA; **AND**

b. LPC on WCRA – give LPC to client and insurer within 1 month of being retained: s.325I(3)(b).

20. Hybrid MAIA/WCRA – where WCRA is a journey claim –

a. LPC on WCRA –

i. give LPC to insurer with the payment direction **AND** to the client: s.325J(2); **OR**

ii. if an LPC hasn't been given when the lump sum is paid direct to claimant and a law practice is retained – LPC to be given to the insurer and client within 7 days of the lump sum payment being made to the claimant: ss.325J(6) & (7); **AND**

b. LPC on MAIA – depending on circumstances; e.g. if new client and law practice lodging NOAC, then LPC given to client before NOAC lodged and LPC given to insurer with the NOAC. Otherwise, within 1 month of being retained LPC to be given to the CTP insurer.