



# PROTOCOLS FOR THE PROVISION OF INFORMATION TO THE MEDICAL PANELS UNDER PART VBA OF THE WRONGS ACT 1958

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## **BACKGROUND**

- The Medical Panels formed the view that due to the often multiple requests for information and delays before Medical Panels in obtaining information and for examinations to occur, that a set of protocols would assist and hopefully streamline the process before Medical Panels.
- The Medical Panels therefore, through the Deputy Convenor, David Ernest, wrote to the ALA seeking the ALA's assistance in drafting some protocols.
- A sub-committee was then formed, the Medical Panels Legal Liaison Working Group, chaired by David Ernest and with representatives from the Australian Insurance Law Association (AILA), the ALA and of course Medical Panels.
- Through this process there was consultation with major plaintiff firms and the ALA Vic. Branch Committee and ultimately the protocols were signed off by the LIV as well.

# THE PROTOCOLS

## 1. INTRODUCTION

- 1.1 Is just an attribution clause confirming that the AILA, the ALA and Medical Panels jointly authored the protocols.
- 1.2 Is just referring to the statutory scheme set out in part VBA of the Wrongs Act 1958, in particular divisions 4 & 5 effectively from sections 28LO to 28LZA.
- 1.3 The process includes the respondent's right to make a referral to a Medical Panel if it disputes the claimant's Certificate of Assessment and also includes provisions for requests for information both before and after a referral to Medical Panels.
- 1.4 Importantly the protocols do not change or affect the statutory scheme in the Act.
- 1.5 Whilst the protocols are not binding, a party's compliance with them or otherwise, may be relevant to a party satisfaction of its CPA obligations.

## 2. OBJECTIVES

- 2.1 The timely provision of information to a Medical Panel.
- 2.2 To minimise delay, especially at Medical Panels.
- 2.3 The parties can still use provisions in the Act to request information – Section 28LWA as well as the Medical Panels' powers under Section 28LZA(2) and Section 28LZC(1).
- 2.4 IMPORTANT The protocols only apply to pre-litigation claims so once proceedings are issued, the Act and Court Rules apply.

### **3. OPERATION**

The protocols apply from when the Certificate of Assessment is served on the respondent.

### **4. SERVICE**

- 4.1** Service can still be made on the respondent in accordance with the Act but paragraph 4.1 sets out the process for service under the protocols where the respondent is known to have a respondent's representative, e.g. an in-house claims manager, insurer or legal practitioner. In those circumstances, service is to be affected via email and registered post on the business address of the representative or, if the representative is a company, on its registered office and the company's office.
- 4.2** Letter serving the claim should clearly identify the enclosures and should advise the respondent to refer the claim to its insurer.

## 5. PROVISION OF INFORMATION

- Where the respondent has a representative, the service of the claim should include the report of the IME who issued the Certificate of Assessment.
- The letter of instruction and enclosures.
- A list of enclosures if not included in the letter.
- Up to date clinical records, not greater than 12 months old of practitioners listed in the prescribed information.

**5.2** It is **important** to note that service of the aforementioned information is only required where the respondent has a representative acting on its behalf and where service is on the respondent itself, then the protocol only requires service in accordance with the Act, ie. service of the prescribed information under Section 28LT of the Act and the Certificate of Assessment using the form prescribed in Regulation 8 of the Regulations, being Form 4.

## **6. REQUEST FOR ADDITIONAL INFORMATION**

This is the key provision for streamlining the provision of information process.

- 6.1** Within 28 days of receipt of the prescribed information and Certificate of Assessment, the respondent can make a request to the claimant for further information.
- 6.2** The respondent must provide reasons for the basis of the request.
- 6.3** The claimant must respond and either:
  - a) provide the information; or
  - b) advise that it will request the information and respond upon receipt; or
  - c) advise that it does not intend to or is unable to provide the information requested.
- 6.4** If the claimant has responded that they will provide the information, then they must:
  - a) provide the information; or
  - b) again advise that they don't intend to or are unable to provide some or all of the information with reasons.

- 6.5** If the claimant's lawyer does not respond in accordance with paragraph 6.3 or advises that they will not or cannot provide the information under 6.3(c) or 6.4(b), then the respondent can ask the Medical Panels to exercise its powers to request information under Section 28LZC, and any request must be made within 14 days. (In other words this paragraph allows the respondent to then invoke the Act).
- 6.6** If a Medical Panel Referral has been made the claimant will consent to the Medical Panel delaying an assessment of the claim.
- 6.7** **Key** - once the request has been made the respondent for additional information either to the claimant under 6.1 or to the Medical Panels under 6.5 (28LZC), then the respondent will not make any more requests for information.
- 6.8** Once the information has been obtained the Medical Panels can proceed with assessment of the claimant.



## **7. WHERE THE MEDICAL PANEL REQUEST INFORMATION**

- 7.1** If the Medical Panel request information following a request made by the respondent under paragraph 6.5, then the Medical Panel will provide the further information to the claimant's lawyer to determine whether the claimant wishes to make any claim for privilege in respect of some or all of the information (e.g. similar to the right to object to subpoenaed material being produced during legal proceedings).
- 7.2** The Medical Panel should request the information in a timely manner.



# Thanks!

Any questions?