

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

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1. INTRODUCTION

1.1 These Protocols have been agreed between the Convenor of Medical Panels, the Law Institute of Victoria, the Australian Insurance Lawyers Association and the Australian Lawyers Alliance, who agree that they and their membership will comply with them, and promote their use as the preferred process for the service of Certificates of Assessment and subsequent referrals to the Medical Panels, under Part VBA of the Wrongs Act 1958 in matters where legal proceedings have not yet been served.

1.2 Part VBA of the Wrongs Act 1958 ("the Act") sets out a statutory scheme regulating the threshold and process for a claimant to recover damages for non-economic loss.

1.3 This process includes a right of a respondent to refer a medical question to a Medical Panel to determine whether the claimant's injuries meet the threshold level of injury required to recover damages for non-economic loss.

1.4 Nothing in these protocols overrides, supplements or otherwise changes the provisions of the Act.

1.5 Whilst these protocols are not binding, compliance with these protocols could be relevant to consideration of a party's satisfaction of his, her or its obligations under the Civil Procedure Act 2010 and any application for judicial review of a Medical Panel determination.

2. OBJECTIVES

2.1 These protocols set out a process for a more timely and ordered provision of information to a Medical Panel prior to the Medical Panel examining the claimant to determine whether the claimant's injuries meet the threshold level.

2.2 These protocols ensure that any delay in the requesting, obtaining and provision of information to a Medical Panel is minimised, while also ensuring that all relevant medical information is provided to a Medical Panel before it examines a claimant.

2.3 The parties recognise that there are already provisions under Part VBA of the Act for the provision of information and that the parties can request information from each other outside these protocols and before the referral of a question to a Medical Panel and are encouraged to do so where appropriate.

2.4 These protocols only apply to pre-litigation claims and do not apply after the service of legal proceedings, at which time the Act and Court rules only apply.

3. OPERATION

These protocols apply:

3.1 Where a respondent has received a Certificate of Assessment ("the Certificate") and prescribed information from a claimant under the Act prior to the service of formal legal proceedings.

4. SERVICE OF CERTIFICATE OF ASSESSMENT AND PRESCRIBED INFORMATION

4.1 Where the respondent is known to be represented by an insurer or third party or in house claims manager or legal practitioner ("Respondent's Representative"), service is to be effected by both email and registered post on the Respondent's Representative's business address or, in the case of a company, its registered office and on the office of the Respondent's Representative.

4.2 The Certificate of Assessment and prescribed information should be clearly identified in covering correspondence and the covering correspondence sent to the respondent should suggest the respondent forward the correspondence and attachments to his, her or its insurer given the serious legal ramifications that will eventuate if they fail to do so.

5. PROVISION OF SUPPORTING INFORMATION

5.1 The Certificate of Assessment and prescribed information should be accompanied by:

- a) A copy of the report of the examiner who issued the Certificate;
- b) A copy of the letter of instruction to the examiner who issued the Certificate and copies of all the accompanying enclosures;
- c) A list of the enclosures; and

- d) Up to date (no more than 12 months old) clinical records of all practitioners listed in the Prescribed Information as having treated the claimant in relation to the alleged injuries, including but not limited to all clinical records provided to the expert who issued the Certificate, subject to any claim for privilege made by the Claimant.

5.2 The supporting documents referred to in 5.1 are only required to be served on the Respondent's Representative and not on the Respondent directly, in accordance with 4.1.

6. REQUEST FOR ADDITIONAL INFORMATION

6.1 Within 28 days of the receipt of a Certificate of Assessment and prescribed information from the claimant under Section 28LT of the Act, the respondent or the Respondent's Representative, if they determine that further medical information is required, will request the further information from the claimant's lawyer.

6.2 When making such a request, the respondent or the Respondent's Representative must set out the basis on which it is asserted that the requested medical information is relevant to the question of whether the claimant's injuries meet the threshold level of impairment for the recovery of damages for non-economic loss.

6.3 Within 14 days of receiving the request from the respondent or the Respondent's Representative, the claimant's lawyer will respond to the respondent or the Respondent's Representative by:

- (a) Providing the requested information; or
- (b) Advising that the claimant's lawyer has or will request the information, or some of the information, and will respond to the request upon receipt; or
- (c) That the claimant does not intend to or is unable to provide the further medical information or some of the information, along with an explanation of reasons.

6.4 In the event the claimant's lawyer responds in accordance with 6.3(b), upon receipt of the information, the claimant's lawyer must then respond to the respondent or the Respondent's Representative by:

- a) Providing the requested information; or
- b) Advising that the claimant does not intend to or is unable to provide the further medical information or some of the information, along with an explanation of reasons.

6.5 In the event the claimant's lawyer does not respond in accordance with 6.3 or responds in accordance with 6.3(c) or 6.4(b), the respondent or the Respondent's Representative can ask the Medical Panel to exercise the power given to it under s.28LZC of the Act. Any such request must be made within 14 days of receiving the response. In considering such a request, the Medical Panel may have regard to the reasons provided by the claimant's lawyer for not providing the additional medical information.

6.6 If a referral to the Medical Panel has already been made, the claimant will consent to the Medical Panel delaying the assessment for a reasonable period until the request for additional information has been finalised.

6.7 Once the respondent or the Respondent's Representative has made a request under either paragraph 6.1 and/or 6.5 of these protocols, the respondent or the Respondent's Representative will not make a request for any further information before or after the Medical Panel examines the claimant.

6.8 Once the additional information has been obtained following a request made in accordance with this section, the Medical Panel will examine the claimant as soon as possible.

7. PROVISIONS FOR WHEN MEDICAL PANEL REQUESTS FURTHER MEDICAL INFORMATION

7.1 If a Medical Panel determines to request further medical information following a request made in accordance with 6.5, it will provide any further information it receives to the claimant's lawyer and allow the claimant's lawyer 14 days to inspect the information to determine if the claimant wishes to make any claim for privilege in respect of some or all of the information.

7.2 The Medical Panel should request any further information as soon as possible after:

- a) Receiving a referral under the Act; or
- b) Receiving a request from the respondent or the Respondent's Representative in accordance with paragraph 6.5 or
- c) Conducting a medical examination of the claimant.