

# Claim Farming amendments update

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Australian Lawyers Alliance seminar

Brisbane

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### Overview

- Motor Accident Insurance and Other Legislation Amendment Bill 2019 (Qld) - effective 5 December 2019
- Claim farming offence provisions
- Legal Practice Certificate requirements
- Other
- Concluding Remarks



### Claim Farming Offence provisions

- New part 5AA applies to referrals of claims and contact to solicit or induce claims
- Two new offences
  - Section 74 Giving or receiving consideration for claim referrals
  - Section 75 Approach or contact for the purpose of making a claim
  - Penalties maximum 300 penalty units per breach plus section 77 impact if convicted
- Part 5AA applies both within and outside Queensland (s.80) extra territorial application





## Applying s74/s75 of MAIA

- s75 outlines conduct that is not 'captured' by the reforms
- Reinforced by explanatory speech and explanatory notes

'This bill is balanced—it does not prevent lawyers from informing people about their rights and entitlements, nor does it prevent them from advertising or promoting their services, sponsoring local sporting clubs or community groups or making bona fide charitable donations. What it aims to do, and what I believe it will do, is stop the harassing calls and intimidating behaviour, particularly toward vulnerable people, minimise the potential for fraudulent behaviour and protect the affordability and stability of the scheme for the benefit of all Queenslanders.'

Excerpt from Deputy Premier Explanatory Speech

- Some law firms have sought guidance from MAIC about their business model
  - MAIC is open to discussions, but we do not give advice



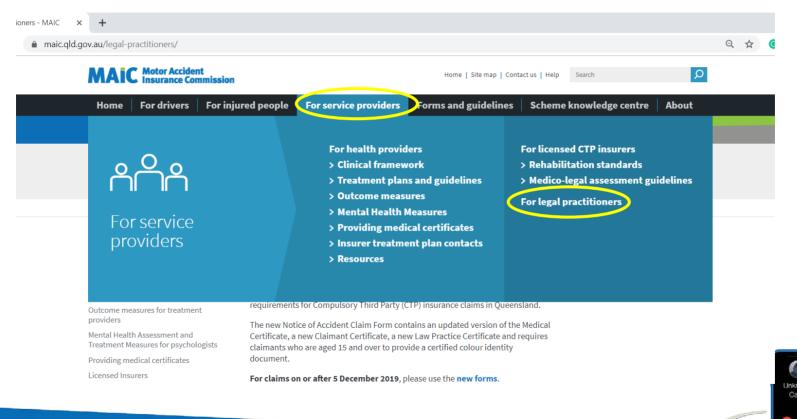
### Legal practice certificate (LPC) requirements

- Obligations for legal practitioners to certify that
  - they have not engaged in claim farming; and
  - have complied with the 50/50 rule includes interstate law practices
- Required to be given:
  - at commencement of claim
  - when new legal practice is engaged
  - upon settlement or judgment
- Penalty for non-compliance in each case maximum 300 penalty units (\$40,035 as at 1 July 2019)



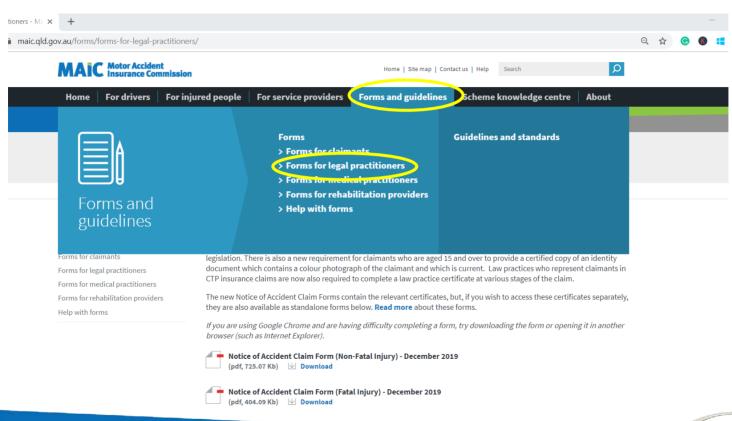


#### MAIC website resources





#### MAIC website resources



Unknown



### LPC – when they are to be given (work in progress)

1. Potential claimant retains law practice after giving notice to insurer BUT prior to compliance



2. Unrepresented claimant retains law practice after giving compliant notice to insurer



3. Potential claimant retains law practice following accident to lodge CTP claim



 Potential claimant retains law practice following accident to lodge CTP claim BUT law practice sells business/claimant to another law practice prior to giving notice to insurer



5. Legally represented claimant retains new law practice (self-initiated/sale of business) post compliance



6. Legally represented claimant achieves settlement of claim





## MAIC process for breach of LPC obligations

- MAIC receives notification from insurer that LPC not provided (or deficient)
  - Initial enquiry to law firm 'please explain'
  - Investigation will follow where response is not provided within seven days or is inadequate
  - MAIC may go straight to investigation phase if firms repeatedly fail to provide LPC's
- MAIC investigates suspected breach...determine if prosecution warranted
- Insurance Commissioner instigates a prosecution
- Penalty for non-compliance in each case maximum 300 penalty units (\$40,035 as at 1 July 2019)
- Additional consequence for conviction under section 41A no recovery of legal costs and disbursements – section 77





## Other new provisions

- Section 36D if LPC is false and misleading 300 penalty units
- Section 37AA where LPC not given to claimant under section 36A and inability to comply with section 37 – law practice **must** refund all costs and disbursements to claimant within 14 days
- Section 77 if convicted of offence under section 74(1), 74(2), 75 or 41A no recovery
  of legal costs and disbursements and must repay amounts received
- Section 80 extra-territorial application. MAIC will be diligent in monitoring and acting on interstate activity





## MAIC analysis and monitoring

- New claim trends....by number, severity, compliance, reporting delay
  - direct,
  - legally represented,
  - Interstate law firm (and whether claimant is Qld or Interstate resident)
- Transfer of claims between law firms
  - Matching file transfers to completion of LPC
- Rates of claims being discontinued





## Concluding Remarks

- Successful implementation of the reforms is MAIC priority for 2020
  - Important that we protect the public from claim farmer harassment and privacy breaches
  - Flows through to protecting the integrity of the CTP scheme
- We are alert to and watching out for changes in claim farmer business models
  - Law firms can play a role in helping alert us to potential changes
- We are well resourced to manage all aspects of the reforms
  - Internal staff and external resources
- The positive support received from ALA and law firms is greatly appreciated





