



# Claim Farming amendments update

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Australian Lawyers Alliance seminar

Brisbane

11 March 2020



# 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



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# 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



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# 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



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# 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)



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# MAIC website resources



- Home
- For drivers
- For injured people
- For service providers**
- Forms and guidelines
- Scheme knowledge centre
- About



## For service providers

### For health providers

- > Clinical framework
- > Treatment plans and guidelines
- > Outcome measures
- > Mental Health Measures
- > Providing medical certificates
- > Insurer treatment plan contacts
- > Resources

### For licensed CTP insurers

- > Rehabilitation standards
- > Medico-legal assessment guidelines

### For legal practitioners

- Outcome measures for treatment providers
- Mental Health Assessment and Treatment Measures for psychologists
- Providing medical certificates
- Licensed Insurers

requirements for Compulsory Third Party (CTP) insurance claims in Queensland.

The new Notice of Accident Claim Form contains an updated version of the Medical Certificate, a new Claimant Certificate, a new Law Practice Certificate and requires claimants who are aged 15 and over to provide a certified colour identity document.

**For claims on or after 5 December 2019**, please use the **new forms**.





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# MAIC website resources

The screenshot shows the MAIC website interface. The browser address bar displays 'maic.qld.gov.au/forms/forms-for-legal-practitioners/'. The MAIC logo is in the top left. The navigation menu includes 'Home', 'For drivers', 'For injured people', 'For service providers', 'Forms and guidelines', 'Scheme knowledge centre', and 'About'. The 'Forms and guidelines' menu item is circled in yellow. Below it, a list of links is shown: 'Forms', 'Forms for claimants', 'Forms for legal practitioners', 'Forms for medical practitioners', 'Forms for rehabilitation providers', and 'Help with forms'. The 'Forms for legal practitioners' link is also circled in yellow. On the left, there is a sidebar with a document icon and the text 'Forms and guidelines'. Below the sidebar, there are links for 'Forms for claimants', 'Forms for legal practitioners', 'Forms for medical practitioners', 'Forms for rehabilitation providers', and 'Help with forms'. The main content area contains text about legislation and a 'Read more' link.

-  **Notice of Accident Claim Form (Non-Fatal Injury) - December 2019**  
(pdf, 725.07 Kb) [Download](#)
-  **Notice of Accident Claim Form (Fatal Injury) - December 2019**  
(pdf, 404.09 Kb) [Download](#)



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# 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
4. 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



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# 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



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# 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



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# 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



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# 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



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# Thank you

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Motor Accident Insurance Commission



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