

**The PIC:
You Must
Prepare First**

**and then lodge in the
PIC – Not Vice Versa**

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By

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THOUGHT FOR THE DAY

PREPARATION, PREPARATION AND MORE PREPARATION.

SINGLE TAKE AWAY LINE:

PREPARE FIRST AND THEN LODGE IN THE PIC, NOT VICE VERSA.

My recommendation to practitioners acting in motor vehicle disputes is **not** to lodge first in the PIC and then prepare the claim. If you do, you may expose your client to the claim being dismissed. It is most unlikely that the PIC Member allocated to assess the dispute will be inclined to give you any, or very little, leeway.

There is a definite change in the culture of the PIC, as opposed to the processes previously adopted in CARS. My advice to fellow practitioners is to embrace the changes and ensure that their claims are ready to run when the claims are lodged in the PIC. Otherwise the outcome may not be to your liking!

Make no mistake about it, the change in the culture of the PIC comes from the very top.

Gone are the days that multiple telephone preliminary assessment conferences will be the order of the day. CARS Claims Assessors previously allowed claimants an opportunity to strap up their claim before setting the claim down for assessment. Some CARS Claims Assessors virtually provided to the parties an informal '*advice on evidence*'. This is not likely to be the order of the day in the PIC.

When you lodge in the PIC, you should be ready to take a date for assessment straight away, if possible.

This is a good thing for the just, quick and cost effective resolution of the **real issues** in CTP claims: prepare first before lodging in the PIC.

The change in culture at PIC will bring the Motor Accidents Division more in line with the Workers Compensation Division.

INTRODUCTION

The Personal Injury Commission (PIC) commenced on 1 March 2021.

There are two (2) streams (divisions) of expertise. The two (2) separate divisions of the PIC are:

1. The Motor Accidents Division;
2. The Workers Compensation Division.

The guiding principle of the practice and procedure of the PIC is to facilitate the just, quick and cost effective resolution of the **real issues** in CTP claims (section 42 of the *Personal Injury Commission Act* – guiding principle to be applied to practice and procedure).

The important matter to remember is that in the new PIC environment there is no change to entitlements and benefits. Entitlements and benefits under the compulsory third-party insurance scheme and the workers compensation scheme are not impacted by the operation of the PIC. There is no impact on existing proceedings.

Pending proceedings in the Dispute Resolution Services and the Workers Compensation Commission as at 28 February 2021 are not impacted. The pending proceedings were transferred to the PIC and will be heard and determined in accordance with the legislative framework that applied to the pending proceedings before the establishment of the PIC.

For my own assistance, I have printed hard copies of the instruments that govern the PIC operations and placed them in a prominent position behind my desk! I also have soft copies on my desktop. This arrangement appears to work well for me.

WHAT GOVERNS THE PIC OPERATIONS?

- **Personal Injury Commission Act 2020** No 18 to establish the PIC and provide for its functions and to make consequential amendments to other legislation – section 3 sets out the objects of the PIC Act, section 5 of the PIC Act sets out the practice of the PIC;
- **Personal Injury Commission Regulation 2020** to provide for existing provisions of any Act, statutory rules or other law to continue to apply to pending proceedings i.e. proceedings commenced before 1 March 2021 that have not been finally determined before that date and appointment of decision-makers and mediators;
- **Motor Accidents Compensation Regulation 2020** relates to costs;
- **Motor Accidents and Workers Compensation Legislation Amendment Regulation 2020** to make miscellaneous amendments consequent on the commencement of Schedule 6 of the PIC Act 2020 (amendments to other legislation);
- **Personal Injury Commission Rules 2021** commenced on 1 March 2021 and applies to all proceedings commenced in the PIC on or after 1 March 2021, which gives effect to the guiding principle to facilitate the just, quick and cost effective resolution of the real issues in the proceedings. The Rules apply to both the 1999 CTP Scheme and the 2017 CTP Scheme. Part 6 of the Rules deals with representation and parties;
- **Procedural Directions** made by the President of the PIC and commencing on 1 March 2021. These complement the PIC Act and the Rule framework. They must be consistent with the PIC Act and enabling legislation.

NOTE KEY CHANGES

All practitioners practicing in the Motor Accidents Division must ensure as far as practically possible that when the applications are lodged, they are ready to run. Gone are the days that you will routinely be given an opportunity to *strap up* the claim once it has been lodged in the PIC.

The concept of *front-end loading* has been addressed, with varied degrees of success, in amendments to the 1999 Act, and the 2017 Act. With the arrival of the PIC, practitioners should be aware that it appears the President and the Members of the PIC are committed to vigorously enforcing the *front-end loading* concept.

1. The **Independent Review Office (IRO)** – formerly known as the Workers Compensation Independent Review Office (WIRO), since 2012 has helped injured workers reach fair solutions with their insurers. New laws have expanded IRO's functions to assist people injured in motor accidents (CTP complaints) and solve complaints about their insurers.

The IRO Solutions Group is the complaints handling team.

The IRO website (www.iro.nsw.gov.au) explains the changes and provides information on how to make a CTP complaint.

The IRO and the State Insurance Regulatory Authority (SIRA) recently signed a Memorandum of Understanding (MoU) which sets out a framework for the two organisations to exchange information essential for the effective and efficient performance of their respective legislative functions. It is effective from 14 July 2021. The MoU is not legally binding on either IRO or SIRA. It is a voluntary statement of the Agencies' intentions as at 14 July 2021.

The MoU sets out the information that will be exchanged between IRO and SIRA. For example, IRO will have access to claims databases SIRA maintains for workers compensation and motor accident compensation claims. This will ensure IRO can effectively deal with injured persons' complaints. IRO will also provide SIRA with regular reports about complaints that IRO receives from claimants about insurers.

In addition, the MoU provides that IRO will notify SIRA of significant matters that arise in the course of IRO exercising its complaint handling function, for SIRA to assess whether it wishes to take further action.

I recommend that claimants who are aggrieved by an insurer decision, avail themselves of the Office of the Independent Review Officer (IRO) complaint handling function.

2. There appears to be a possible ambiguity associated with various requirements under the PIC Rules in relation to the service of sealed copies of documents. For example, sub rule 28(2) of the PIC Rules states that a document is taken to be served under an Electronic Case

Management (ECM) system or email '*at the time the document is capable of being received by the receiving party*'. Other provisions applicable to motor accident proceedings under the PIC Rules however, for example sub rule 94(3) of the PIC Rules, require a 'sealed copy of the application' to be served on the other party within seven days of the registration of the application.

I query the necessity of the requirement at sub rule 94(3) of the PIC Rules, when under rule 28, the application is already deemed to have been served under the ECM system when it is registered under the system and, if functioning properly, able to be viewed by both parties.

I understand that there are currently issues with the PIC portal which has resulted in some uncertainty about whether both parties can see the documents lodged on the portal. These issues are currently being addressed. PIC staff are developing a mechanism to seal documents in the Motor Accidents Division so that service can be effected in accordance with the requirements under the Rules. I expect this process will be revisited once the PIC portal is fully functional and both sides are made aware of what is on the portal. The President of PIC has been approached and has been requested to clarify if this understanding is correct.

In the interim, it would be useful for the profession to understand how the requirement for sealing / lodging on the ECM system will work in practice.

As we will all be aware, there are currently issues with the operation of the PIC Portal. The Personal Injury Commission is committed to updating the PIC Portal's functionality on a regular basis to improve users' experience when using it.

If you are a practitioner who practices in the PIC environment, I recommend that you ensure you are on the *mailing list* to receive both the **PIC News** and the **PIC Legal Bulletin**. This will alert you to any updates referable to the PIC Portal's functionality and also recent relevant decisions.

3. The PIC, on the application of the parties or at the discretion of the Commission, may direct motor accident damages matters **not** ready to proceed to assessment to be placed in a '*stood over*' list. This list is similar to the informal DRS '*not ready*' list that was previously in existence. However, it is anticipated that the Commission will vigorously monitor the formal '*stood over*' list. The Commission may issue further directions concerning the review of motor accident proceedings placed in the '*stood over*' list. However, unless the Commission orders differently, matters **not** restored within 6 months, **are taken to have been discontinued**.

4. The Commission may give leave to amend any document lodged, if it considers the amendment to be necessary to avoid an injustice. The Commission will **not** give leave to amend a document if the amendment will have the effect of substantially altering the parties to the proceedings unless the Commission considers the amendment to be necessary in the interests of justice (Division 4.2 of the Rules).
5. A party can lodge additional documents, **only in the approved form**, in motor accident proceedings at any time before the assessment if:
 - Lodged by consent
 - Lodged at the direction of the Commission, or
 - It is in the interests of justice for them to be lodged.

The approved form is headed Application to Admit Late Documents. The approved form is to be used when a party is applying for leave to introduce late evidence.

6. In any matter where weekly benefits are in dispute, a schedule of earnings must be lodged, in a new approved form. The approved form must be used to provide earnings information. This requirement applies to both the 1999 Scheme and the 2017 Scheme. If the schedule of earnings is disputed, the respondent must provide a schedule of earnings in response.
7. In a claim for damages, Division 10.3 Rule 100 of the Rules requires a schedule of damages to be included in claims for damages. If the schedule of damages is disputed by the respondent, the respondent must provide a schedule of damages in response.
8. Failure by an applicant to prosecute the proceedings with due dispatch is a ground of dismissal in all Personal Injury Commission proceedings. As previously indicated, numerous preliminary telephone conferences before the claim is ready to be assessed will no longer be tolerated unless, of course, there are convincing reasons for the delay. It is for this reason that I implore practitioners to be ready, as far as practicable, to *take a date* when the application is lodged. The Rules also provide a number of grounds of dismissal in motor accidents proceedings that reflect the current *Motor Accidents Guidelines Version 7* effective from 1 March 2021.
9. The PIC will only accept lodgement of documents through the online portal, unless the President (or delegate) allows otherwise. Documents **not** lodged through the online portal may only be lodged with the PIC via email and post, **NOT** by DX or fax.
10. Medical Review Panels will consist of 3 persons being 2 medical assessors and 1 member of the PIC who is a member assigned to the Motor Accidents Division of the PIC.

11. Instead of a staff member issuing a final combined certificate in Motor Accidents WPI matters, the Workers Compensation Commission procedure for issuing a final certificate has been adopted. A 'lead assessor' will be nominated to issue the final Certificate once all assessments are complete.
12. Publication of Decisions is now mandatory, including medical review panel decisions. There is no power to withhold a decision from publication but there is provision for the de-identification or redaction of published decisions.

EXTENSION OF TIME DISCRETION

13. An **application for review of a medical assessment under the *Motor Accidents Acts (1999 and 2017)***, must be made within 28 days after the parties to the medical dispute were issued with the original certificate as to the medical assessor's decision.
14. An **application for review of a merit review under the *Motor Accidents Injuries Act 2017*** must be made within 28 days after the parties to the merit review were issued with the certificate as to the merit reviewer's decision.
15. An **appeal to a Presidential Member of the Personal Injury Commission under section 352 of the *Workplace Injury Management and Workers Compensation Act 1998***, can only be made within 28 days after the making of the decision appealed against.
16. These amendments will apply where the first instance decision is made on or after 1 March 2021.
17. There is no provision in the PIC's procedural framework, including the PIC Rules 2021, to extend the time to make such applications for review or appeal. In marked contrast to previous practice, there is no capacity to exercise any discretion to accept a late appeal or application for review, that is, an application that is lodged after the prescribed timeframe for lodgement.
18. As I understand, it was intended to retain the ability for an extension of time with respect to such applications for appeal and review. However, until such time as there are legislative amendments to rectify these issues, the PIC intends to deal with the issues as follows:
 - 1) Any appeal or review application lodged within time in the PIC will be accepted, whether compliant or not, and a direction will be issued to regularise any compliance issues afterwards;
 - 2) An appeal or review application with respect to a decision made on or after 1 March 2021, will be subject to the 28 day time limit to lodge an appeal or review application

against the decision. There is no provision in the PIC Rules 2021 to extend the time to make an appeal or review application.

PROCEDURAL DIRECTIONS

If you intend to operate in the PIC jurisdiction, it is essential that you familiarise yourself with the Procedural Directions that apply to the Motor Accidents Division of PIC:

- ❖ **Procedural Direction PIC1** – Conduct of parties during proceedings in the Motor Accidents Division and the Workers Compensation Division;
- ❖ **Procedural Direction PIC2** – Determination of matters '*on the papers*';
- ❖ **Procedural Direction PIC3** – Documents and late documents;
- ❖ **Procedural Direction PIC4** – Expert Witness Evidence;
- ❖ **Procedural Direction PIC5** – Schedule of Earnings;
- ❖ **Procedural Direction PIC6** – Medical Assessments;
- ❖ **Procedural Direction PIC7** – Appeals, reviews, reconsiderations and correction of errors in medical disputes;
- ❖ **Procedural Direction PIC8 – THERE IS NO PIC8** – unsure as to why this is. It is a mystery;
- ❖ **Procedural Direction PIC9** - Production of Information and Calling of Witnesses;
- ❖ **Procedural Direction PIC10** – Hearings during COVID-19.
- ❖ **Procedural Direction MA1** – applies only to the Motor Accidents Division. Stood over proceedings;
- ❖ **Procedural Direction MA2** – Merit review;
- ❖ **Procedural Direction MA3** – Approval of damages settlement;
- ❖ **Procedural Direction MA4** – Appointed representatives;
- ❖ **Procedural Direction MA5** – Matters unsuitable for assessment and mandatory exemptions;
- ❖ **Procedural Direction MA6** – Review of a single merit review by a review panel;
- ❖ **Procedural Direction MA6** – Claims disputes.

Procedural Direction PIC1

Conduct prior to proceedings:

- [16] Parties are expected to have preliminary discussions prior to any listing in the PIC. The preliminary discussions should focus on identifying and resolving the real issues in dispute, completely or in part. If this is **not** possible then the parties should endeavour to limit the real issues in dispute.

[17] To achieve this objective, the parties **must** lodge the following with an Application or Reply:

- 1) A statement of agreed facts and issues in accordance with rule 70 of the PIC Rules;
- 2) An agreed schedule of earnings (Rule 68) **and** schedule of damages (Rule 100) [the Rules say **or** which may require an amendment to **and** in appropriate circumstances];
and
- 3) Any agreement reached as to the degree of permanent impairment in one or more body parts.

Procedural Direction PIC2

Determination of matters ‘*on the papers*’.

PIC2 addresses the procedure to be adopted for a determination of the claim ‘*on the papers*’.

Procedural Direction PIC3

Documents and late documents

[16] In a claim for damages, a schedule of damages in my opinion **must be provided with the application**. If a party disputes the accuracy of the schedule of damages lodged with the application, the respondent must lodge a schedule of damages with their Reply in accordance with rule 100 of the PIC Rules.

[17] In proceedings where statutory benefits are in dispute, a schedule of earnings, in the prescribed form, in my opinion **must be provided with the application**. If a party disputes the accuracy of the schedule of earnings, the Respondent must lodge a schedule of earnings with the Reply (refer Rule 68 of the PIC Rules).

Applications to admit late documents are dealt with at [23] and [24]. The important issue to be aware of is that **reasons** for the lateness of the document and for its admission in the proceedings **must** be set out in the appropriate application form. Pro forma paragraphs quoting the PIC’s power to admit late documents should not be used as the only basis to support the application, otherwise will most probably not be successful.

[33] In determining an application for leave to admit late documents, the President will consider if it is in the interests of justice for the documents to be lodged, having considered the objects of the enabling legislation, the PIC Act and all of the circumstances of the application and the claim.

I strongly suggest that, as previously recommended, all practitioners practicing in the Motor Accidents Division must ensure that as far as practically possible, when the applications are lodged, they are ready to run. In my opinion, gone are the days that you will routinely be given an

opportunity to *strap up* the claim once it has been lodged in the PIC. The parties **may not** be given approval to lodge late documents or amend their documents. Rule 67 requires certain material to be lodged at the time an application is lodged or a reply is lodged.

The PIC NEWS Special Rules Edition issued on 9 September 2021. Make sure everyone is on the mailing list to receive the Personal Injury Commission News and the Legal Bulletin.

The edition focuses on the PIC Rules (2021) and work that is underway to identify and update the Rules that have not been working well in practice since the PIC commenced on 1 March 2021.

The PIC Rule Committee will shortly be undertaking a review of the PIC Rules (2021). The Law Society has been invited to provide submissions on those rules considered **not** to be working well in practice. The Law Society's submissions are due by 7 October 2021.

The President of the PIC is committed to ensuring that the PIC Rules are fit for purpose and work well in practice.

The initial Review of the PIC Rules (2021) will be finalised towards the end of 2021. Its scope is to identify the Rules that have not been operating well in practice since the PIC commenced on 1 March 2021.

I invite practitioners to provide their suggestions to the Law Society Injury Compensation Committee directed to Ann-Marie Boumerhe Ann-Marie.Boumerhe@lawsociety.com.au. The sub-committee will then consider all suggestions and then draft Law Society submissions.

Submissions will close on 7 October 2021, and the Rule Committee will vote on proposed changes towards the end of October 2021.

The President of PIC asks everyone to be mindful that the PIC's Rules must be as flexible and informal as possible (s19(2)(b) of the *Personal Injury Commission Act 2020*) and that they give effect to the objects and guiding principles of the *Personal Injury Commission Act 2020*.

There has been a major change to Rule 67 material to be lodged in applicable proceedings, commencing at the start of the Law Term 2022. The President says the necessity to undertake this review was initiated in part by the late service of surveillance material by insurers in the Motor Accidents Division of the PIC which has been leading to delays and applications for adjournments.

The Rule Committee met on Thursday 2 September 2021 and unanimously resolved:

1. To repeal Rule 67(5) from the Personal Injury Commission Rules 2021; and
2. To amend Rule 67(3) and (4) so that they read as follows:
 - (3) no change

- (4) an additional c) all parties to the proceedings consent to the lodgement, and the appropriate decision maker gives the party leave to lodge the additional documents.

The Rules provide that a party to proceedings must file and serve on all other parties, with an application and reply, all information and documents relevant to the real issues in the proceedings. An applicant must serve the application and supporting documents within 7 days of registration. The respondent must, within 21 days of registration of the application, file a reply to the application and supporting documents, and serve a sealed copy on the other parties.

From commencement of law term 2022, any matter filed in the Motor Accidents Division will be allocated to a member for a conference within 28 days. The prior practice of the Dispute Resolution Service (DRS) where allocation of the matter would be delayed pending the filing of a reply will no longer be a practice that is adopted.

Parties are required to file their reply within 21 days and if this requirement is not met and the matter is otherwise ready to proceed, it will proceed in the absence of that material.

Further, if the application that has been filed is incomplete or is not ready, the member, in the exercise of their discretion, may dismiss the matter. In terms of practice on the applicant's part in the Motor Accidents Division, the message is clearly to prepare the claim, so it is ready to proceed when it is filed.

Although this is the message conveyed in the PIC News sent on 9 September 2021, it certainly dovetails into the thrust of my paper I am presenting today

These changes will commence at the start of the law term 2022.

Procedural Direction PIC4

Expert Witness Evidence

Under sub rule 35(3) of the *Personal Injury Commission Rules*, unless the PIC orders differently, expert evidence that does **not** comply with the relevant procedural direction is **not** admissible in PIC proceedings. Under paragraph 11(b) of Procedural Direction PIC4, the relevant expert is required to acknowledge that they have read and agree to be bound by the Procedural Direction.

In many cases, expert evidence consists of reports obtained months or even years prior to the commencement of proceedings. I retained strong concerns about this requirement for reports prepared **prior to** the PIC establishment.

If compliance with the new Procedural Direction PIC4 was required for reports prepared **prior to** 1 March 2021 (or the date the Procedural Direction was published), a supplementary report would have been required from every medical and liability expert who has been engaged. My concern was that this may cause a considerable backlog of work for medical and liability experts, increased costs

for scheme stakeholders and, in the case of workers compensation claims, the Independent Review Office (formerly WIRO). In circumstances where the experts have ceased taking new appointments (for example, Associate Professor Michael Fearnside), such amended or supplementary reports may **not** even be available.

Further, this requirement may have caused significant issues for claimants with statutory limitation timeframes expiring.

For these reasons, this requirement may have been impractical in practice and added to scheme costs and delays.

The PIC President has now clarified this requirement. It will not be necessary for expert reports finalised **prior to** 1 March 2021, to comply with the new Procedural Direction PIC4.

Procedural Direction PIC5

Schedule of Earnings

Under rule 68 of the PIC Rules, a claimant must include in an application in relation to a weekly payment dispute, a schedule of earnings containing full particulars of the amount claimed. Pre-accident weekly earnings (PAWE) and other weekly payment disputes have become some of the most complex issues in the motor accidents scheme, primarily where injured persons are self-employed. However, claimants involved in PAWE disputes in the motor accidents scheme are usually unrepresented. This is largely because regulated legal costs are **not** recoverable for these types of disputes under the *Motor Accident Injuries Regulation 2016*.

I am concerned about how a self-represented claimant will be able to provide this information accurately, noting the complexity of what is required in the motor accidents legislation. While I understand that PIC members will have the ability to dispense with the requirement to include a schedule of earnings, I consider that in the interests of fairness and access to justice, such a requirement should be automatically waived for non-legally represented claimants.

I understand the President of PIC is considering this proposal.

Schedule of earnings under the 2017 Act

[27] A schedule of earnings is required for claims arising under Div 3.3 of Pt 3 of the 2017 Act, that is weekly payments of statutory benefits to injured workers. Schedule 1 of the 2017 Act provides relevant definitions for terms contained in that division.

[28] There are three (3) entitlement periods for weekly payments:

- (a) the first entitlement period (the first 13 weeks after motor accident);
- (b) the second entitlement period (weeks 14-78 after motor accident), and

- (c) after the second entitlement period (after week 78).

Schedule of damages under the 1999 Act

- [32]** A schedule of damages must be provided by the parties in the application and reply in respect of any claim for damages.
- [33]** The schedule must set out the quantum of any heads of damage in dispute, including, but not limited to:
- (a) non-economic loss;
 - (b) past economic loss;
 - (c) future economic loss;
 - (d) past superannuation;
 - (e) future superannuation;
 - (f) past treatment;
 - (g) future treatment;
 - (h) past gratuitous care;
 - (i) future gratuitous care;
 - (j) past paid care;
 - (k) future paid care;
 - (l) any other matters claimed.

Schedule of damages under the 2017 Act

- [34]** A schedule of damages must be provided by the parties in the application and reply in respect of any claim for damages.
- [35]** The schedule must set out the quantum of any heads of damage in dispute, including, but not limited to:
- (a) non-economic loss;
 - (b) past economic loss;
 - (c) future economic loss, and
 - (d) any other matters claimed.

Procedural Direction PIC6

Medical Assessments

PIC6 applies to the Motor Accidents Division and the Workers Compensation Division generally and then applies individually to the divisions.

Motor Accidents Division

[11] An application for medical assessment under the 1999 Act may be brought at any time. Rules 102 and 103 of the PIC Rules set out the pre-lodgement requirements for permanent impairment and treatment disputes under the 1999 Act.

[12] In relation to applications for medical assessment under the 2017 Act:

- (a) A medical dispute about a decision of an insurer may not be referred for assessment by a claimant until either:
 1. the decision has been the subject of an internal review by the insurer;
 2. the insurer has failed to complete an internal review and notify the claimant of the internal review decision within the required period; or
 3. the insurer has declined to conduct a review.
- (b) An application for a medical assessment may be lodged at any time, and should be lodged as soon as practicable after the claimant receives either:
 1. the insurer's internal review of the reviewable decision
 2. the insurer's decision to decline to conduct the internal review, or
 3. if the insurer has failed to complete the internal review and notify the claimant of the internal review within the required period, as soon as practicable after that due date.

[13] In addition to the above requirements:

- (a) an application for assessment of a permanent impairment dispute under the 2017 Act must also include evidence in support of the degree of permanent impairment asserted by the party, and
- (b) an application for assessment of a minor injury dispute must also include evidence in support of the injury asserted by the party.

Procedural Direction PIC7

Appeals, reviews, reconsiderations and correction of obvious errors in medical disputes

PIC7 applies to the Motor Accidents Division and the Workers Compensation Division generally and then applies individually to the divisions.

Motor Accidents Division

[33] Either party may apply to the President to refer a medical assessment by a single medical assessor to a review panel for review. Such an application may only be made on the grounds that the decision was incorrect in a material respect.

- [34] An application for review of a medical assessment **must be made within 28 days** after the parties to the medical dispute were issued with the original certificate for the medical assessment for which the review is sought.
- [35] A combined certificate assessment cannot be the subject of a review, except by way of review of any of the assessments of the single medical assessor on which the combined certificate assessment is based.
- [36] A medical assessment may not be referred for review on more than one occasion.

There is no provision in the Personal Injury Commission's procedural framework, including the PIC Rules 2021, to extend the time to make such applications for review or appeal. There is no capacity to exercise any discretion to accept a late appeal or application for review. There is no capacity to accept an application filed after the prescribed timeframe (28 days) for lodgement.

It is the understanding of the President that it was intended to retain the ability for an extension of time with respect to such applications for appeal and review and this matter is currently being reviewed by the NSW Government. However, until such time as any legislative amendment may be made to rectify these matters, the Commission intends to deal with the issue as follows:

1. Any appeal or review application lodged within time in the Commission will be accepted, whether compliant or not, and a direction will be issued to regularise any compliance issues afterwards.
2. Any appeal or review application with respect to a decision made on or after 1 March 2021, will be subject to the 28-day time limited to make an appeal or review application against the decision. There is no provision in the Personal Injury Commission Rules 2021 to extend the time to make an appeal or review application.

Procedural Direction PIC9

Production of Information and Calling of Witnesses

PIC9 applies to the Motor Accidents Division and the Workers Compensation Division generally and then applies individually to the divisions.

Notices for production between parties

- [7] **Notices for production only apply to workers compensation proceedings** (see s 290 of the 1998 Act and rule 37 of the PIC Rules). *(my emphasis)*

Applications to admit late documents applies to both divisions.

Calling witnesses/summonses to attend applies to both divisions.

Power to issue Directions for Production applies to both divisions. However, if the proceedings are allocated to the Motor Accidents Division, a Summons may be issued only to a party to the proceedings.

Application to issue a summons applies to both divisions.

Procedural Direction PIC10

Hearings during COVID-19

This is self-explanatory.

Procedural Direction MA1

Claims which are not ready to proceed to assessment, are referred to the 'Stood Over' List.

- [14]** Unless otherwise ordered by the Commission, proceedings are referred to the stood over list for a period of six (6) months.
- [15]** Proceedings will be discontinued at the expiry of six (6) months from the day the proceedings were stood over and dismissed in accordance with Rule 101(3) of the PIC Rules, unless a party applies to have the proceedings restored for hearing, or unless an extension of time has been granted by the Commission.
- [16]** A party can apply to restore the proceedings for hearing by applying to the Commission and providing submissions demonstrating that the proceedings are ready for hearing.
- [17]** The Commission will determine if the proceedings are to be restored for hearing, or otherwise discontinued and dismissed. In the absence of an application by a party to have the proceedings restored for hearing, or to have time on the stood over list extended, the proceedings will be discontinued and dismissed at the expiry of six months.

PROCEDURAL DIRECTION MA2

Merit Review

- [8]** Section 7.12 of the 2017 Act provides that a claimant may apply for a merit review of a decision of an insurer about a merit review matter (a 'reviewable decision').

The remainder of MA2 applies to the commencement and resolution of the merit review proceedings.

PROCEDURAL DIRECTION MA3

Approval of Damages Settlement

When an application for approval of damages settlement must be made

- [7]** Rule 96 of the PIC Rules and section 6.23 of the 2017 Act provides that a claim for damages by an injured person cannot be settled within two (2) years after the motor accident unless the degree of permanent impairment of the injured person as result of the injury caused by the motor accident is greater than 10%.

The Commission must approve the settlement of self represented claimants.

- [9]** An application must be made by the insurer on behalf of the insurer and the claimant within seven (7) days of reaching settlement.

The remainder of MA3 applies to the commencement and resolution of the proceedings.

PROCEDURAL DIRECTION MA4

Appointed representatives

This procedural direction deals with legal incapacity and the appointment of a representative for a claimant.

The remainder of MA4 applies to the commencement and resolution of the proceedings.

PROCEDURAL DIRECTION MA5

Matters unsuitable for assessment and mandatory exemptions

This procedural direction deals with exemptions under the *Motor Accidents Compensation Act 1999* and Exemptions under the *Motor Accidents Injuries Act 2017*.

PROCEDURAL DIRECTION MA6

Review of a single merit review by a review panel

- [8]** A claimant or insurer may apply to the President to refer a decision of a single merit reviewer to a review panel of merit reviewers for review by lodging an application in the form approved by the President within 28 days of the date that the parties to the merit review were issued with a certificate referred to in section 7.13(4) of the 2017 Act as to the merit reviewer's determination.
- [19]** The President will review the application, reply, documentation and materials relevant to the application to determine whether the President is satisfied that there is reasonable cause to suspect that the decision determining the merit review was incorrect in a material respect, as required by section 7.15(3) of the 2017 Act.

The remainder of MA6 applies to the commencement and resolution of the merit review proceedings.

PROCEDURAL DIRECTION MA7

Claims Disputes

MA7 applies to applications lodged under both the 1999 and 2017 Act.

- [1] (a) the assessment of claims referred for assessment made under Part 4.4 of the *Motor Accidents Compensation Act 1999* (the 1999 Act), including those referred for assessment of damages, or assessment under s96 of the 1999 Act, but excluding those claims referred for exemption which are covered by Procedural Direction MA5;
 - (b) the assessment of claims referred for special assessment made under s96 of the 1999 Act;
 - (c) the assessment of claims referred for assessment made under Part 7, Divisions 7.6, Subdivision 2 of the *Motor Accident Injury Act 2017* (the 2017 Act), and
 - (d) the assessment of claims referred for miscellaneous assessment made under Part 7, Division 7.6, Subdivision 3 of the 2017 Act.
- [8] Proceedings may be commenced by either party by lodging an application in the form approved by the President and within the timeframes set out in the enabling legislation and the PIC Rules.
- [14] An application for general assessment of a claim under the 1999 Act may be brought at any time. Rules 92(1) and (2) of the PIC Rules set out the pre-lodgement requirements that must be complied with in order for an application to be made.
- [44] Both s95 of the 1999 Act and s7.38 of the 2017 Act provide that an assessment of the amount of damages for liability under a claim is binding on the insurer, and the insurer must pay to the claimant the amount of damages specified in the certificate as to the assessment if the insurer accepts that liability under the claim, and the claimant accepts that amount of damages in settlement of the claim within 21 days after the certificate of assessment is issued. An assessment of damages is not binding in a claim where the insurer has denied liability, and liability has been determined by the member.
- [45] For claims made under the 1999 Act the insurer is required to advise the Commission in writing, no later than two (2) months after the issue of the certificate of assessment, whether or not that certificate of assessment has as yet been accepted or rejected by either party.
- [46] For claims made under the 2017 Act the claimant is to give written notice to the insurer of their acceptance or rejection. The insurer is to give written notice to the claimant of any mutual acceptance or rejection of the assessment. The assessment acceptance day is prescribed by Part 5, Division 4, Clause 15(3) of the 2017 Regulation as the earlier of either

the day on which the insurer receives notice of the claimant's acceptance of damages, or the day that is 21 days after the certificate of assessment is issued to the insurer.

The remainder of MA7 applies to the commencement and resolution of the proceedings.

