



Legal Liaison Group
Minutes of Meeting – 12 December 2007
Level 26, 222 Exhibition Street, Melbourne

Present:

Elana Rubin (Chair)	Steve Jacobs	John Salanitri (for Liberty Sanger)
Greg Tweedly	Jon Letten	Hayden Stephens
Marlo Baragwanath	Greta Madsen (Secretary)	John O'Connor
Ian Forsyth	Len Boehm	Joy Marshall
Greg Brown	JaneBloomfield	Paul Mulvany
Peter McNally	Simon Guthrie	Marcus Fogarty

Apologies: Richard Morrow, Ron Beazley, Tim Connor, Kathy Wilson, Liberty Sanger

1 Minutes of the previous meeting	The minutes of the 23 August 2007 meeting were endorsed.
2 Actions arising from previous meeting – Peter McNally	<p>(a) Policy and Procedures from Form D and (b) reinforce panel firm compliance with Form D - The policy was amended at paragraph 6 to clarify that material obtained via the consent and provided to a worker's representative is to be without charge. Compliance has been reinforced with panel firms.</p> <p>(c) PwC presentation to include projected lodgements and grant rates - Covered in the PwC presentation.</p> <p>(d) Dissemination of Minister's response to Raeburn - The Minister's response in Raeburn was circulated to the LLG group in August.</p> <p>(e) RTW Prosecution Statistics - These statistics are included as appendix 1 in the Key Issues Paper.</p>
3. PwC Presentation – Chris Latham (PwC)	<p>Chris Latham of PriceWaterhouseCoopers (PwC) presented the actuary's perspective on new common law.</p> <p>The presentation included projected lodgements and grant rates.</p> <p>Lodgements are projected at around 2000 per accident year.</p> <p>PwC noted that grant rates were higher than previously projected and they increased their assumption at June 2007. The current grant rate remains higher than their revised projections of 80% and a reduction is still expected in the future.</p>

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The LLG group also discussed:

- Lodgements - WorkSafe is noticing an increase in the number of serious injury applications at the lower end of the serious injury spectrum and this leads to concerns around the ability to manage scheme liabilities;
- Pain & Suffering (PS) Only certificates represent around 40% of granting decisions;
- Legal Costs are now 35% of settlement amounts and PwC have made some increases to average sizes. In particular, the legal costs for PS only certificates are broadly consistent with those for both heads;
- Benefit Delivery - The time between injury and delivery of common law benefits. Serious injury applications are made on average 4.5 years after injury and the common law process, particularly where litigated, adds significant further time to the delivery of benefits;
- Average settlements have been reasonably stable after an increase in average settlements for both heads of damages during the 05/06 year;
- Weekly Benefits - the complexity in the interaction between common law pecuniary loss damages and workers ceasing weekly payments;
- TAC experience - Jane Bloomfield reported that largely due to the age of the TAC's common law experience, and its protocols, actuarial projections are relatively consistent with legal costs, average settlement size and grant rates, and that the greatest vulnerability lay with interstate claims.

Action: A copy of PwC's presentation is to be sent to LLG members.

Action: The next PwC presentation is to include median damages (in addition to average damages).

Action: Any additional suggestions about future presentations are



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	to be forward to Marlo Baragwanath by mid January.
4. Key Issues Update Paper – Peter McNally	<p>Plaintiff Costs Project – pilot - The pilot has continued to show success in timeliness, and it will run for approximately another 6 to 12 months.</p> <p>Cost consultant management initiative - The use of cost consultants was reviewed early in 2007 and since May 2007 approximately 50% of matters are now managed internally, which has resulted in improved timeliness in the payment of plaintiff's costs.</p> <p>Ministerial Costs Orders 2006 and Form D - The outcomes have been reasonably stable since the August LLG Key Issues Paper.</p> <p>Pain and Suffering Only Offers - Peter reported that there is some concern about the number of matters that apply for both heads of damages, but end up resolving for pain and suffering only. There was discussion as to what proportion of cases run under both heads rather than under pain and suffering only. It was noted that the majority of cases run under both heads, and often the pecuniary loss head is withdrawn during the hearing. This means that the VWA's panel firms must prepare for the economic loss component which incurs costs. Often the VWA has made a pain and suffering offer early in the proceedings but the matter runs for sometime before resolving for pain and suffering only.</p> <p>Pre-Litigated serious injury decisions in 120 days - Serious injury grants in the first 120 days increased in the third quarter of 2006 and have been largely maintained since that time. About 80% of claims are resolved in the pre-litigated statutory conference stage.</p> <p>OM serious injury conferences – This initiative has not been as successful as anticipated when the protocol was established. Peter reported that there is a proposal to make the conferences voluntary rather than mandatory, though this is not yet finalised.</p> <p>Action: WorkSafe will consult with plaintiff and defendant firms in regards to the ongoing format for "<i>OM Serious Injury Conferences.</i>"</p>



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	<p>RTW Prosecutions - The statistics are also available on the WorkSafe website.</p>
<p>5. Legislation Update</p>	<p>Marlo Baragwanath reported:</p> <ul style="list-style-type: none"> • The <i>Transport Accident and Accident Compensation Acts Amendment Act 2007</i>, which included the <i>Taylor</i> amendments and increases to family counselling, received Royal Assent on 27 November. • The <i>State Taxation and Accident Compensation Acts Amendment Act 2007</i> amended the ACA to enable the VWA to better assist injured workers with modifications to cars and homes in line with provisions in the <i>Transport Accident Act</i>. It received Royal Assent on 11 December 2007. <p>Greg Tweedly also reported that the Minister has announced that Mr Peter Hanks QC will conduct an independent review of Victoria’s Accident Compensation Act. The review is to be completed by 30 June 2008.</p> <p>Legislative change proposals previously submitted by stakeholders will be passed onto the Review. Any additional proposals LLG members wish to include will also be submitted.</p> <p>Action: The Minister’s media release will be forwarded to LLG members</p> <p>Action: MB to send out a list of legislative change proposals previously submitted.</p>
<p>6. Stakeholder Committees</p>	<p>Greg Tweedly reported that key issues discussed at recent Board meetings included:</p> <ul style="list-style-type: none"> - Scheme actuarial valuation and projections; - The restructure of the Dispute Management Practice; - The reporting line of HMSs in Agents will now be to the Health Services Group; - Changes to the physiotherapy model; - Updates on Strategy 2012; - The recent US/Europe mission in relation to improving marketing and communications; - RTW inspectorate, which will be ongoing - Injured worker survey – marginal improvement since June 2007.



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	<p>Greg Tweedly also noted that the harmonisation process has been discussed at length at the WAC.</p>
7. General Business	<p>Peter McNally reported that a meeting took on the 22 October 2007 with some LLG members and other plaintiff lawyers. Plaintiff lawyers raised concern that the VWA had changed their policy in regards to the payment of Ministerial Costs where less than 90% of the plaintiff's statutory counter offer is achieved after a damages writ is issued. The VWA explained the Legal Cost Order 2006 (and the 2001 version) was quite clear in terms of requirements and there had been no specific VWA policy required to cover this area. Data shows that around 20% of damages writs that have resolved have had ministerial costs paid when in the "no-cost" zone.</p> <p>Paul Mulvany raised a concern in relation to applications made by WorkSafe/Agents to revoke conciliation directions. As there is a time limit of only 7 days to make the application, service on the worker and their representative just prior to the application date can be distressing. Steps could be taken to warn workers that such conciliation directions can result in such applications.</p> <p>Action: Greg Brown to liaise with Paul Mulvany and Kylie Menz of WorkSafe's Service Improvement Division to discuss the issue and report back to the next LLG meeting.</p> <p>Marlo Baragwanath advised that 2008 LLG meetings will be held on Monday mornings at 8 am on 18 February, 23 June, 18 August, 24 November.</p>
Next Meeting:	<p>The next meeting will be held on 18 February 2008 in the Boardroom, Level 26, 222 Exhibition Street, Melbourne from 8.00 a.m. to 9.30 a.m.</p>