



P11 Session

CLCQ Leadership Forum

9 November 2023

Living, Laughing, Learning in the CLC Sector

Acknowledgment

- ▶ **We acknowledge and pay our respects to the Traditional Owners of the lands and waters across Australia on which we all live and work.**
- ▶ **We pay our deep respects to Elders, past and present for their ongoing leadership and advocacy.**
- ▶ **We also acknowledge and pay our respects to all Aboriginal and/or Torres Strait Islander people joining us today.**
- ▶ <https://www.reconciliation.org.au/reconciliation/acknowledgement-of-country-and-welcome-to-country/>

Introduction

- ▶ Roles and responsibilities of PII Reps
- ▶ Insurance notifications
- ▶ Changes to the Risk Management Guide
- ▶ Questions for discussion

Roles and Responsibilities of the PII Representatives

The National PII Network

The National PII Network is comprised of at least one representative from each state and territory (called a state/territory PII Representative) and CLCs Australia staff members including the CEO.

PII Representatives

- ❖ Convene at least 2 meetings of the PII Committee/Group in their state/territory every calendar year.
- ❖ Communicate information, strategies and policy from the National PII Network back to the state/territory PII Committee/Group.
- ❖ Represent their state/territory on the National PII Network and attending the meetings each month
- ❖ Provide a state report (orally) at the monthly PII Network meetings, including key developments in legal practice in the jurisdiction, any relevant issues arising with Centres, any trends with notifications, any issues with the relevant law society or key legislative amendments proposed or commenced.
- ❖ Coordinate Cross-Check arrangements

Roles and Responsibilities of the PII Representatives cont.

PII Representatives

- ❖ Liaise with Regional Accreditation Coordinators on matters relating to legal practice as identified by the annual Cross-Check process as needed.
- ❖ Identify areas for improvement in legal practice in their state/territory and support and facilitate training and the sharing of good legal practice within the jurisdiction.
- ❖ Provide guidance or assist Centres to obtain guidance in their state/territory on the RMG and on the PII Policy.
- ❖ Provide guidance to Centres on potential notifications and claims under the National PII Policy.
- ❖ Bring information to the attention of the National PII Network about issues arising in their state/territory that relate to the application and compliance with the PII Policy.

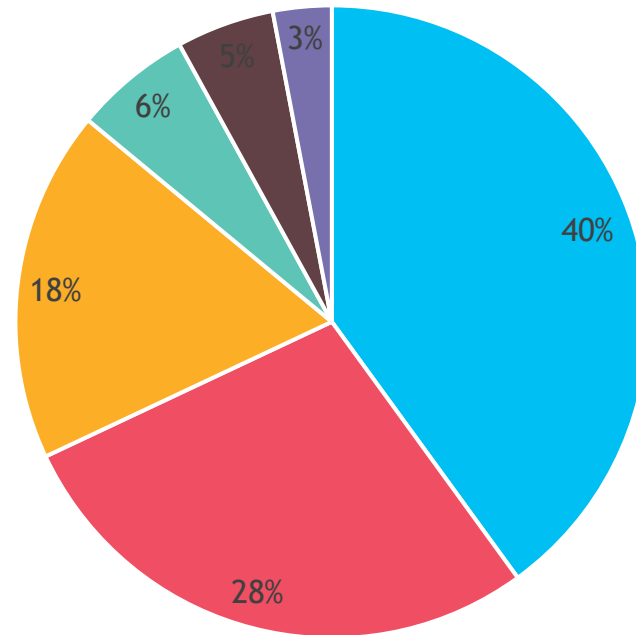
Roles and Responsibilities of the PII Representatives cont.

PII Representatives

- ❖ Bring information to the attention of the National PII Network about issues arising in their state/territory that relate to interpretation of the RMG, application of the RMG, and supporting a nationally consistent application of the RMG.
- ❖ Notifying the National PII Network of any systemic failure of a Centre to comply with the RMG and liaising regarding any next steps and concerns around membership.
- ❖ Maintain record keeping and ensuring they are easily transferrable to a new or incoming PII Representative to share the role or take over the role to ensure a continuance of historical information and institutional knowledge.
- ❖ Maintaining confidentiality of Centre specific information that is acquired in the administration of the PII Scheme and only communicating that information where appropriate and necessary.
- ❖ Making a recommendation or providing advice to the state/territory CLC peak/association about a Centre's eligibility for inclusion in the PII Scheme as part of the assessment process of new members.

PII Notifications and claims by type

30 June 2022 to 30 June 2023



- Breach of confidentiality/ privacy
- Delay in advice/missed deadline
- Incorrect advice
- Conflict of interest
- Other
- conduct/ breach of professional duty

Notifications due to breach of privacy/breach of duty of confidentiality

- ▶ 43 notifications – from ACT, NSW, Queensland, Victoria, WA
- ▶ The notifications fall into 5 categories
 - ▶ Advice/documents sent to the wrong person (63%)
 - ▶ Case/ client details shared without permission (21%)
 - ▶ Lost/ stolen documents (9%)
 - ▶ Other (7%)

Insurance Notifications

- ▶ When are other centres making notifications to the insurer versus chatting to the broker?

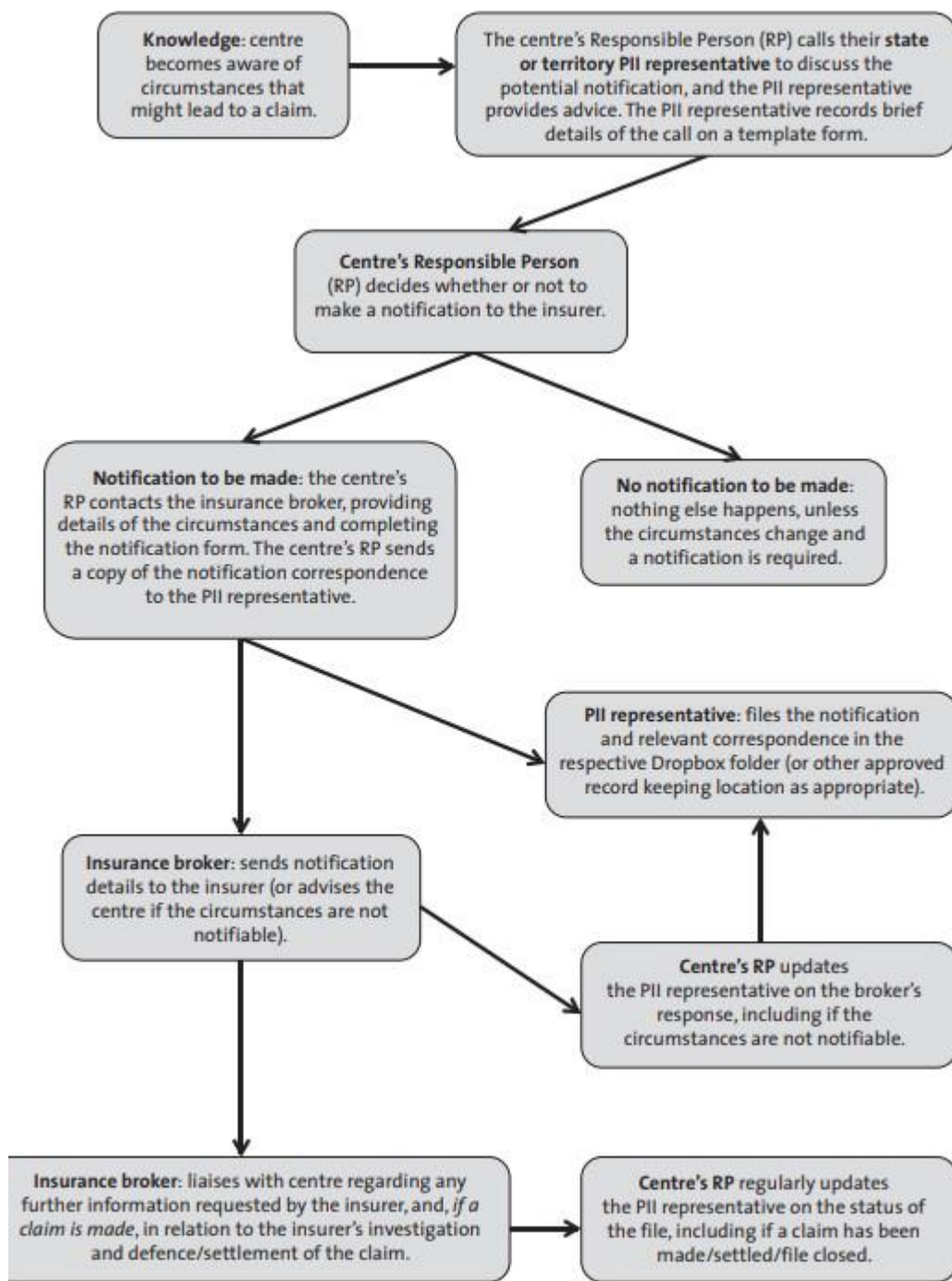
If you become aware of circumstances that could give rise to a claim or you receive a claim, then it is important to make a notification.

The policy requires:

If You, either prior to or during the Period of Insurance become aware of a situation which could, if not rectified, lead to a Claim or increase the quantum of a claim, You shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability under this Policy.

You shall frankly and honestly disclose to Us all relevant information and, in addition, shall provide assistance to Us as We may reasonably require to enable Us:

1. to investigate and to defend any Claim under this Policy; and
2. to determine Our liability under this Policy



Notification Process

Upcoming changes to the RMG

- ▶ Feedback has been obtained from many different sources, State PII Meetings (like this one), advertising in sector newsletters, and consultation with non-traditional centres and non-legal sectors (social workers etc)
- ▶ PII Network is meeting a few times each month to review and provide feedback on specific sections
- ▶ New Risk Management Guide will be less complicated, focused on core principles and will avoid duplication. Assumed compliance with external documents and cth/state specific legislation and rules
- ▶ Aiming to be finalised early next year (hopefully!)



Questions and Topics for Discussion

Discussion Topic 1

Lady wants advice as she is named as executor in deceased husbands Will. She wants advice on her duties as executor. Some years ago (let's say 5 years) we represented the deceased in a DV matter where she is listed as other party.


- ▶ *Variables:*
- ▶ *IF we appeared as duty lawyer on one occasion only to obtain an adjournment.*
- ▶ *IF the Will gives the entirety of the estate to her*
- ▶ *IF the Will gives only some of the estate to her (so she may potentially have a claim for a higher share)*
- ▶ *AND she is a person who needs an interpreter, is distressed, is old with mobility issues, lives locally to our centre and there are no other CLCs likely to be able to assist.*

10. Conflicts concerning former clients

- 10.1 A solicitor and law practice must avoid conflicts between the duties owed to current and former clients, except as permitted by Rule 10.2.
- 10.2 A solicitor or law practice who or which is in possession of confidential information of a former client where that information might reasonably be concluded to be material to the matter of another client and detrimental to the interests of the former client if disclosed, must not act for the current client in that matter UNLESS:
 - 10.2.1 the former client has given informed written consent to the solicitor or law practice so acting; or
 - 10.2.2 an effective information barrier has been established.

11. Conflict of duties concerning current clients

- 11.1 A solicitor and a law practice must avoid conflicts between the duties owed to two or more current clients, except where permitted by this Rule.
- 11.2 If a solicitor or a law practice seeks to act for two or more clients in the same or related matters where the clients' interests are adverse and there is a conflict or potential conflict of the duties to act in the best interests of each client, the solicitor or law practice must not act, except where permitted by Rule 11.3.
- 11.3 Where a solicitor or law practice seeks to act in the circumstances specified in Rule 11.2, the solicitor may, subject always to each solicitor discharging their duty to act in the best interests of their client, only act if each client:
 - 11.3.1 is aware that the solicitor or law practice is also acting for another client; and
 - 11.3.2 has given informed consent to the solicitor or law practice so acting.

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- 11.4 In addition to the requirements of Rule 11.3, where a solicitor or law practice is in possession of confidential information of a client (the first client) which might reasonably be concluded to be material to another client's current matter and detrimental to the interests of the first client if disclosed, there is a conflict of duties and the solicitor and the solicitor's law practice must not act for the other client, except as follows:
- 11.4.1 a solicitor may act where there is a conflict of duties arising from the possession of confidential information, where each client has given informed consent to the solicitor acting for another client;
 - 11.4.2 a law practice (and the solicitors concerned) may act where there is a conflict of duties arising from the possession of confidential information where an effective information barrier has been established.
- 11.5 If a solicitor or a law practice acts for more than one client in a matter and, during the course of the conduct of that matter, an actual conflict arises between the duties owed to two or more of those clients, the solicitor or law practice may only continue to act for one of the clients (or a group of clients between whom there is no conflict) provided that the duty of confidentiality to other client(s) is not put at risk and the parties have given informed consent.

Discussion Topic 2

Client has a mental health issue and has become 'fixated' on a particular lawyer. Comes in wanting to see them and refusing to leave when lawyer not available. Threatens suicide if unable to see lawyer.

Client has family law issues and has received advice already but needs additional assistance in drafting documents.

The conflict of what is best for staff to not have to see this person vs the person's need for legal assistance even when their mental health makes it challenging to obtain help.

Discussion Topic 3

The need for client agreements under the RMG. The pro forma in the schedule is pretty hard for most people to understand.

In what circumstances is it ok not to have a written client agreement?

(examples where client is a child or illiterate or cannot read english or may not have full legal capacity (eg being assessed for fitness for trial or on a mental health order), so that they may be able to instruct us for the matter but will not understand a client agreement).

Discussion Topic 3

Letter of engagement or client/litigation agreement

8.8.3

Whenever Ongoing Assistance is undertaken and a file is opened, it is mandatory that the client is advised of the Services that the centre has agreed to provide and that a short description of this is recorded in the file (and, sometimes, in the file register⁵⁹). It is recommended, as good practice, that a 'client/litigation agreement'

or a 'letter of engagement' or written 'retainer' is provided to the client, if appropriate. (See definition in **Glossary** and see the sample letters of engagement at **Appendix J**). This is a **Mandatory Standard** in circumstances where the legal profession laws of the particular state or territory require it. In some cases, for example where work is done quickly to meet a deadline, this may not be practical. In those cases it is desirable to provide the client with written confirmation of the work that was undertaken as soon as is possible afterwards, if that is practicable.

8.8.4

Even if it is not practical to get a client agreement signed, it is good practice to confirm the following in writing to your client:

- what your centre is agreeing to do
- what you are not agreeing to do
- what happens if further Representation or other Ongoing Assistance is required.

Discussion Topic 4

*How other centres manage conflict and information barriers in
CLASS?*

Discussion Topic 5

How do other centres approach the collection of confidential information at intake?