

Submission to the initial review of Personal Injury Commission rules

Submission to the NSW Personal Injury Commission

7 October 2021

Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.



Personal Injury Commission

SUBMISSION TO THE INITIAL REVIEW OF PERSONAL INJURY COMMISSION RULES

Use this template to make a submission about why a specific Personal Injury Commission Rule should be deleted or amended because it is not operating well in practice.

Submissions cannot exceed maximum length of 1000 words, and a separate submission should be made in relation to each Rule.

Name of the Submitting Stakeholder Organisation²

Australia Lawyers Alliance

Rule number

Rule 101 (3)

Set out why the Rule is not operating well in practice.

Rule 101 (3) ought to be removed. Courts have generally spoken out against guillotine orders and suggested that it should take a deliberate act to deny someone their rights by way of a formal application or consideration of the individual facts of a particular matter rather than a mere effluxion of time. Furthermore, considerable delays are being experienced across the board because of the current COVID-19 pandemic and this provision remains inappropriate in that context. It otherwise appears to conflict with practice direction 1.

Set out how the problem with the Rule's operation should be resolved (i.e., delete the Rule or set out the proposed amended Rule or other).

Delete the rule

² The Commission's preference is for individuals to submit their views through a relevant stakeholder organisation – these are listed in Attachment 2 to the Consultation Package for the Initial Review.

Rule number

Rule 109

Set out why the Rule is not operating well in practice.

Rule 109 ought to be amended to read “in any proceeding before the commission” to differentiate from the limitation in subsection 1. If the rules are to be harmonised then why would we treat this differently? If there is a single PIC then there should be a single set of rules for both Workers Compensation and Motor Accident claims.

Furthermore, there should be expansion of the rule at ss(2) – currently the proposed draft doesn’t guarantee the reports that go with the recording are produced and otherwise doesn’t get you all of the material. It allows an edited version to be served. For example, an insurer could engage a private investigator to watch an injured person for 20 days where nothing occurs of relevance but then they produce an isolated incident or recording without the context of the entire surveillance period. This is misleading and lacks credibility and more importantly any probative value of the material produced. If the commission is serious about examining surveillance material then they ought to ensure all of the material underpinning it is made available so it can be properly assessed to ensure procedural fairness and natural justice is preserved. An amendment to the current drafting could read as follows:

“the recording and any associated reports and ensure all surveillance in the possession of the party providing the material is served”.

Set out how the problem with the Rule’s operation should be resolved (i.e., delete the Rule or set out the proposed amended Rule or other).

Amended rule as per suggestions above.

Rule number

Rule 108

Set out why the Rule is not operating well in practice.

At present the PIC is allowing the parties to consent to audio visual assessments to take place in light of the current delays and backlog of cases before MAS. By allowing the parties to consent first or seeking feedback from the parties about their preferences is not in compliance of this rule on a strict reading of the rule. In short, if the PIC believes an audio visual assessment ought to take place it should be ordered.

Set out how the problem with the Rule's operation should be resolved (i.e., delete the Rule or set out the proposed amended Rule or other).

The approach taken to audio visual assessments should be ordered in accordance with the rule as currently drafted.