

General information on the notice of claim for damages

Completion of the Notice of Claim for Damages form is a requirement under the *WorkCover Queensland Act 1996* (the Act).

If an interpreter is required to assist in the completion of the Notice of Claim for Damages form, contact Translating and Interpreting Service on 131 450.

INFORMATION REGARDING A CLAIM

The claimant is either the injured worker or dependent of a fatally injured worker.

WHEN SHOULD THE NOTICE OF CLAIM FOR DAMAGES FORM BE COMPLETED?

For a worker injured on or after 1 February 1997 and before 1 July 2001

- After the issues of 'worker' and 'injury' have been determined and a Notice of Assessment or Damages Certificate has been received.

For a dependent of a worker fatally injured on or after 1 February 1997 and before 1 July 2001

- After the issues of 'worker' and 'injury' have been determined, or a Damages Certificate has been received.

Where the date of injury is on or after 1 July 2001 and before 1 July 2003

- Where claimant is a worker, after the issues of 'worker' and 'injury' have been determined and a Notice of Assessment received and if a statutory claim has been lodged; or
- Where there is a claimant who is a dependent of a fatally injured worker; or
- Where there is no previous statutory claim; or
- Where there is an urgent need to commence proceedings.

CHANGE OF INFORMATION

Where the date of injury is on or after 1 February 1997 and before 1 July 2001

- The claimant must give the workers' compensation insurer *written* notice of *any change* in relation to information contained in the Notice of Claim for Damages.
- The notice of change must also state the date of, and reasons for, the change in the information.

Where the date of injury is on or after 1 July 2001 and before 1 July 2003

- The claimant must give the workers' compensation insurer *written* notice of *any significant change* in relation to information contained in the Notice of Claim for Damages.
- The notice of change must also state the date of, and reasons for, the change in the information.

LODGEMENT

Where the date of the injury is on or after 1 February 1997 and before 1 July 2001

- The Notice of Claim for Damages form can be lodged at any office of the workers' compensation insurer.
- If the employer is not a self-insurer, only a copy of the Notice of Claim for Damages, without the supporting documentation, must be provided to the employer.

Where the date of the injury is on or after 1 July 2001 and before 1 July 2003

- The Notice of Claim for Damages form together with supporting documentation must be lodged at the registered office of the workers' compensation insurer.

- If the employer is not a self-insurer, only a copy of the Notice of Claim for Damages, without the supporting documentation, must be provided to the employer.

WHAT HAPPENS FOLLOWING LODGEMENT?

Where the date of the injury is on or after 1 February 1997 and before 1 July 2001

- The workers' compensation insurer must respond within 30 days after receiving the Notice of Claim for Damages as to its compliance (section 282 of the Act).
- A reasonable period of time – at least 30 days – must be given to remedy any non-compliance (section 282 of the Act).
- No further steps can be taken until either the Notice of Claim for Damages is made compliant or the court orders otherwise (section 302 of the Act).
- Once the form is compliant or compliance is waived, the workers' compensation insurer must advise the employer within 30 days (section 282 of the Act).
- The workers' compensation insurer must make a decision on liability, respond to the claimant's offer or make a counter-offer within six months from date of compliance, or in the case of a worker with a terminal condition, within three months (section 285 of the Act).

Where the date of injury is on or after 1 July 2001 and before 1 July 2003

- The workers' compensation insurer must respond within 14 days of lodgement of the Notice of Claim for Damages as to its compliance.
- A reasonable period of time – at least 14 days – must be given to remedy any non-compliance (section 282 of the Act).
- No further steps can be taken unless the workers' compensation insurer waives compliance with the Notice of Claim for Damages under section 280A or until the Notice of Claim for Damages is either made or deemed compliant or the court orders otherwise (section 302 of the Act).
- Once the form is compliant or compliance is waived, the workers' compensation insurer must advise the employer within 7 days (section 282 of the Act).
- The workers' compensation insurer must make a decision on liability, respond to the claimant's offer or make a counter-offer within six months from date of compliance, or in the case of a worker with a terminal condition, within three months (section 285 of the Act).

URGENT NEED TO COMMENCE PROCEEDINGS

Where the date of injury is on or after 1 February 1997 and before 1 July 2001

The insurer may issue the claimant with a conditional certificate in certain circumstances, for example, usually where the limitation period will shortly expire. Proceedings are then stayed until the insurer makes the certificate unconditional. Alternatively, a claimant may apply to the court for leave to commence proceedings (section 305 of the Act).

Where the date of injury is on or after 1 July 2001 and before 1 July 2003

The Notice of Claim for Damages may be **faxed** to the workers' compensation insurer in accordance with section 74A of the *WorkCover Queensland Regulation 1997*.

- Section 74A provides that the Notice of Claim for Damages must be faxed to –
 - WorkCover at WorkCover's registered office; or
 - if the worker's employer is a self-insurer – the self-insurer at the self-insurer's registered office.

General information on the notice of claim for damages

- The claimant's Notice of Claim for Damages must include a cover page stating –
 - the sender's name and address; and
 - the total number of pages sent, including the cover page; and
 - the fax number from which the notice is sent; and
 - the date of the transmission; and
 - the name and fax number of the person to whom the fax is being sent; and
 - the name and telephone number of a person to contact if there is a problem with the transmission; and
 - a statement that the transmission is for the giving of the Notice of Claim for Damages under section 280A(4) of the Act.

SUPPORTING DOCUMENTATION

The Notice of Claim for Damages must be accompanied by copies of all documents in support of the claim (section 280(8)) whether the injury date is on or after 1 February 1997 or on or after 1 July 2001 and before 1 July 2003.

These include, but are not limited to:

- hospital, medical and other reports relating to the injury sustained by the worker, other than reports obtained by or on behalf of WorkCover Queensland or the workers' compensation insurer; and
- income tax returns, group certificates and other documents for the three years immediately before the injury supporting the claimant's claim for lost earnings or diminution of income-earning capacity; and
- invoices, accounts, receipts and other documents evidencing the claimant's claim for out-of-pocket expenses.

OFFER

The Notice of Claim for Damages must be accompanied by a genuine offer to settle or a statement of reasons why such an offer cannot be made.

RESOLUTION OF CLAIM

Every attempt must be made to resolve the claim.

Where the date of the injury is on or after 1 February 1997 and before 1 July 2001

- If the claim cannot be resolved, the *claimant* must organise a compulsory conference prior to commencing legal proceedings.

Where the date of injury is on or after 1 July 2001 and before 1 July 2003

- If the claim cannot be resolved, a compulsory conference prior to commencing legal proceedings must be held.
- *Either party* can organise the conference.

COST ADVICE

Where the date of injury is on or after 1 February 1997 and before 1 July 2001

- Prior to the compulsory conference or any other type of settlement attempt, the claimant's lawyer must advise the claimant, in writing, of the costs incurred to date, estimates of extra costs incurred through the conference, and if that fails, costs in proceeding to trial.
- The likely net damages at settlement must also be outlined in the report.

- The report must be received by the claimant at least four days prior to the compulsory conference (sections 296 and 297).

Where the date of injury is on or after 1 July 2001 and before 1 July 2003

- At least seven days before the compulsory conference, each party must give the other:
 - copies of all documents;
 - a statement that all relevant documents in the possession of the party or the party's lawyer have been given;
 - details of legal representation; and
 - if a party has legal representation, a signed certificate of readiness for the conference.
- The party's lawyer must give the party:
 - a financial statement setting out costs incurred to date;
 - estimates of extra costs incurred through the conference; and
 - the likely net damages if the matter proceeds to trial or if the matter settles without proceeding to trial.
- The statement must also include the cost consequences to the party of proceeding to trial where the damages awarded are more or less than the claimant's final offer.
- A copy of the certificate of readiness and the costs statement must be given to each party by each party's lawyer before settlement of a claim is attempted in a way other than by a compulsory conference (section 293B).

OTHER INFORMATION

Mitigation of loss

- Workers are required to do all they can to minimise the effects of their injury eg. following medical advice, participating in rehabilitation and seeking suitable work duties.
- Failure to do so may result in damages being reduced.

Fraud

- Anyone convicted of fraud in relation to an injury on or after 1 February 1997, may lose his/her rights to statutory compensation and common law damages for the injury.

AUTHORITY TO OBTAIN INFORMATION AND DOCUMENTS

The claimant must also give written permission to allow the workers' compensation insurer to obtain any records or information which may affect the claim from:

- (a) a hospital; or
- (b) the ambulance service of the State, or another State; or
- (c) a doctor, provider of treatment or rehabilitation services or person qualified to assess cognitive, functional or vocational capacity; or
- (d) an employer or previous employer; or
- (e) insurers that carry on the business of providing workers' compensation insurance, compulsory third party insurance, personal accident or illness insurance, or insurance against the loss of income through disability, superannuation funds or any other type of insurance; or
- (f) a department, agency or instrumentality of the Commonwealth or the State; or
- (g) a solicitor, other than where giving the information or documents would breach legal professional privilege.

A suggested format for the Authority forms part of this guide.

AUTHORITY TO PROVIDE INFORMATION AND DOCUMENTS

I, _____
(full name)
of _____
(street)
_____ (suburb/town) _____ (postcode)

authorise the workers' compensation insurer to obtain information and documents relevant to the accompanying Notice of Claim for Damages in the possession of the following, in accordance with section 280(7) of the *WorkCover Queensland Act 1996*:

- (a) a hospital; or
- (b) the ambulance service of the State, or another State; or
- (c) a doctor, provider of treatment or rehabilitation services or person qualified to assess cognitive, functional or vocational capacity; or
- (d) an employer, or previous employer; or
- (e) insurers that carry on the business of providing workers' compensation insurance, compulsory third party insurance, personal accident or illness insurance, insurance against the loss of income through disability, superannuation funds or any other type of insurance; or
- (f) a department, agency or instrumentality of the Commonwealth or the State; or
- (g) a solicitor, other than where giving the information or documents would breach legal professional privilege.

Claimant's signature: _____

Date: _____ / _____ / _____

