



## COMMUTATIONS

This operational instruction refers to the procedure for Commutations. It may be publicly distributed to ensure that parties to a Commutation are aware of the conditions that must be met, and the roles of WorkCover and the Workers Compensation Commission in certifying and registering a Commutation.

However, a Scheme Agent and other parties must be familiar with the legislative framework governing Commutations and Workers should be encouraged to seek legal advice before considering a Commutation.

A Commutation is a lump sum settlement made to a Worker that is exchanged for the Workers Compensation Benefits specified in the Commutation agreement for the period specified in the Commutation agreement. On its terms, the Commutation agreement can be a payment in exchange for all Workers Compensation Benefits for the past and future for the specified Injury (subject to payments made).

The procedure for the Commutation of Workers Compensation Benefits under the Scheme, regardless of the date of Injury or the date the Claim for compensation was made, involves:

- (a) agreement between the Worker and the Scheme Agent to commute the Claim and agreement on the amount of the Commutation
- (b) certification by WorkCover that the conditions for a Commutation listed in section 87EA(1) of the 1987 Act have been met
- (c) registration of the Commutation agreement by the Workers Compensation Commission.

Section 87G provides for a Commutation to an injured Worker who is legally incapacitated because of their age or mental incapacity.

Sections 87D to 87K (Division 9) of the 1987 Act refer to Commutation of compensation. Section 87EA(1) lists the conditions that must be met in order for WorkCover to issue a certificate.

In order to receive certification that the conditions listed in section 87EA(1) have been met, one of the parties to the Commutation must lodge an application with WorkCover providing supporting information demonstrating that these conditions have been met. An application form is attached.

The application form must be completed in full and forwarded to WorkCover. All documents attached to the application form must be clearly identified with the Worker's name and Claim number.

As part of the application, it may be necessary to provide information that is verified by the Scheme Agent. Where this is the case, a nominated officer of the Scheme Agent must sign the verification. Details of the names of nominated officers, along with their qualifications and experience, are to be provided in writing to WorkCover's Claims Branch.

Section 87F (6) provides that a Commutation agreement has no effect until it is registered by the Registrar of the Workers Compensation Commission. Requirements for registration are set out in section 87H.

Document name: Operational Instruction 1.1	Prepared by: Regulatory and Financial Services Group
Version: 2.0	Issue date: October 2005
Revision: 0	Review date: February 2008
Page 1 of 7	TRIM file 2005/047717 Doc no D05/056405

## OPERATIONAL INSTRUCTION 1.1

If WorkCover is satisfied that the conditions of section 87EA have been met, a certificate will be issued to the applicant and an application to register a Commutation agreement can then be lodged with the Workers Compensation Commission.

Section 87F of the 1987 Act must be complied with before an application for registration can be lodged with the Commission.

### References

*Workers Compensation Act 1987*, sections 87D-K

Workers Compensation Regulation 2003, Schedule 6, Parts 1(2)(i), 2

Deed, Schedule 2, clause 2.2.13

Document name: Operational Instruction 1.1	Prepared by: Regulatory and Financial Services Group
Version: 2.0	Issue date: October 2005
Revision: 0	Review date: February 2008
Page 2 of 7	TRIM file 2005/047717 Doc no D05/056405



## Application to WorkCover for Commutation

A Commutation is an injured Worker's entitlement to Workers Compensation Benefits paid out as a lump sum of money.

WorkCover will certify a Commutation if certain legal requirements have been met. These requirements are known as preconditions and are outlined in section 87EA(1) of the 1987 Act.

The preconditions for having a liability for an Injury commuted to a lump sum include:

- (a) the Worker has a permanent impairment that is at least a 15 percent whole person impairment
- (b) compensation for permanent impairment and pain and suffering has been paid
- (c) ongoing weekly Benefits have been regularly and periodically received for the previous six months
- (d) more than two years have elapsed since compensation for the Injury was first received
- (e) all opportunities for Injury management and Return To Work have been exhausted
- (f) weekly Benefits have not been stopped or reduced as a result of the Worker not cooperating with the Injury Management Plan.

The certificate issued by WorkCover must be forwarded to the Workers Compensation Commission together with Form 5A – Application to Register a Commutation Agreement for Registration or, where the Worker is legally incapacitated by reason of age or mental capacity, Form 5C – Application for Determination to Commute Liability (available from [www.wcc.nsw.gov.au](http://www.wcc.nsw.gov.au)).

The Commutation agreement will be registered by the Workers Compensation Commission if:

- (a) the Commutation has been approved by the Worker
- (b) independent legal advice has been given to the Worker
- (c) the insurer and Worker are in agreement about the Commutation
- (d) all agreements have been registered with the Workers Compensation Commission.

Document name: Operational Instruction 1.1	Prepared by: Regulatory and Financial Services Group
Version: 2.0	Issue date: October 2005
Revision: 0	Review date: February 2008
Page 3 of 7	TRIM file 2005/047717 Doc no D05/056405

**PART 1 – DETAILS OF THE PARTIES**

**This application is completed by the:**

- Worker
- Licensed Insurer
- Self-Insurer
- Specialised Insurer
- Other, specify \_\_\_\_\_

**or by the legal representative or agent of the:**

- Worker
- Licensed Insurer
- Self-Insurer
- Specialised Insurer
- Other, specify \_\_\_\_\_

**Worker's details**

Surname Mr/Mrs/Ms \_\_\_\_\_  
 Other names \_\_\_\_\_  
 Date of birth \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Address/DX \_\_\_\_\_  
 Tel \_\_\_\_\_  
 Fax \_\_\_\_\_  
 Email \_\_\_\_\_  
 Claim number \_\_\_\_\_

**Worker's legal representative/agent details**

Surname Mr/Mrs/Ms \_\_\_\_\_  
 Other names \_\_\_\_\_  
 Company name \_\_\_\_\_  
 Address/DX \_\_\_\_\_  
 Tel \_\_\_\_\_  
 Fax \_\_\_\_\_  
 Email \_\_\_\_\_

Document name: Operational Instruction 1.1	Prepared by: Regulatory and Financial Services Group
Version: 2.0	Issue date: October 2005
Revision: 0	Review date: February 2008
Page 4 of 7	TRIM file 2005/047717 Doc no D05/056405

**Employer's details\*** (ie. Employer at time of Injury)

Company name \_\_\_\_\_  
 ABN             
 Contact person \_\_\_\_\_  
 Address/DX \_\_\_\_\_  
 Tel \_\_\_\_\_  
 Fax \_\_\_\_\_  
 Email \_\_\_\_\_

**Employer's legal representative/agent details\***

Surname Mr/Mrs/Ms \_\_\_\_\_  
 Other names \_\_\_\_\_  
 Company name \_\_\_\_\_  
 Address/DX \_\_\_\_\_  
 Tel \_\_\_\_\_  
 Fax \_\_\_\_\_  
 Email \_\_\_\_\_

**Insurer's details\***

Company name \_\_\_\_\_  
 Contact person \_\_\_\_\_  
 Address/DX \_\_\_\_\_  
 Tel \_\_\_\_\_  
 Fax \_\_\_\_\_  
 Email \_\_\_\_\_

**Insurer's legal representative/agent details\***

Surname Mr/Mrs/Ms \_\_\_\_\_  
 Other names \_\_\_\_\_  
 Company name \_\_\_\_\_  
 Address/DX \_\_\_\_\_  
 Tel \_\_\_\_\_  
 Fax \_\_\_\_\_  
 Email \_\_\_\_\_

\*If a Commutation agreement concerns more than one Employer and/or insurer, provide details for all Employers and/or insurers – and legal representatives/agents – involved in the Commutation agreement.

Document name: Operational Instruction 1.1	Prepared by: Regulatory and Financial Services Group
Version: 2.0	Issue date: October 2005
Revision: 0	Review date: February 2008
Page 5 of 7	TRIM file 2005/047717 Doc no D05/056405

**PART 2**

Complete Part 2 of the application to demonstrate that the Claim complies with all the preconditions (as outlined above) and, as such, meets the criteria for WorkCover certification.

**Injury details**

Date of Injury \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Nature of Injury \_\_\_\_\_

Worker's occupation (at time of Injury) \_\_\_\_\_

**Date of Claim** \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

A period of two years must have elapsed since the Worker's first Claim for weekly compensation payments in respect of the Injury was made.

**Medical reports**

Does the Worker have an existing and continuing entitlement to weekly compensation payments for the Injury (whether the incapacity is partial or total)?

- Yes                       No

If Yes, attach medical reports indicating that the injured Worker has received maximum medical improvement.

Also, attach copies of medical reports indicating degree of permanent impairment (ie. percentage of whole person impairment) sustained by the Worker.

WorkCover may refer these reports to approved medical specialists accredited by the Workers Compensation Commission.

**Schedule of payments**

***Weekly payments***

Has the Worker received regular and periodic compensation payments for the Injury throughout the six months preceding this application?

- Yes                       No

If Yes, attach a schedule of payments verified by the insurer.

***Permanent impairment/pain and suffering***

Has the Worker received payments for permanent impairment and/or pain and suffering under section 66 and/or section 67 of the *Workers Compensation Act 1987*?

- Yes                       No

If Yes, attach a schedule of payments verified by the insurer.

***Discontinued payments***

At any stage, with respect to the injury, have weekly compensation payments been discontinued under section 52A, or reduced under section 38A, of the *Workers Compensation Act 1987*?

- Yes                       No

If No, attach written confirmation from the insurer.

Document name: Operational Instruction 1.1	Prepared by: Regulatory and Financial Services Group
Version: 2.0	Issue date: October 2005
Revision: 0	Review date: February 2008
Page 6 of 7	TRIM file 2005/047717 Doc no D05/056405

