

INJURY MANAGEMENT OF WORKERS ON WORKERS COMPENSATION COMMISSION AWARDS

This operational instruction outlines the approach for the case management of Injured Workers on weekly payments of compensation that are subject to court awards and Workers Compensation Commission (WCC) awards or orders (with all such awards referred to in this OI as a WCC award) and outlines when a Scheme Agent may apply to the WCC for a review of a statutory award under section 55 of the *Workers Compensation Act 1987* (the 1987 Act). This section does not apply to consent awards.

This operational instruction should be read in conjunction with Operational Instruction 1.23 – Ongoing Partial Incapacity Benefits, Operational Instruction 4.4 – Litigation Policy and Operational Instruction 4.5 – Nominal Insurer Model Litigant Policy.

PRINCIPLES TO BE APPLIED TO THE MANAGEMENT OF COURT AND WCC AWARDS

- All scheme agents must continue to have in place an up-to-date and relevant Injury Management Plan for these Workers. In managing Claims where there is a WCC award the Scheme Agent should:
 - establish and implement a suitable Injury Management Plan (*Workplace Injury Management and Workers Compensation Act 1998*, section 45)
 - ensure the Claim is managed with a focus on reasonableness and fairness to the Worker;
 - take a holistic approach to developing, implementing and reviewing the Claims strategy;
 - ensure clear and effective communication to the Worker of their obligations when in receipt of a award;
 - consider the health, social and financial implications for the Worker; and conduct regular time and event driven Claim strategy reviews, including reviewing the circumstances/facts used by the relevant jurisdiction in determining the award.
- 2. All Injured Workers who come under *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act), and are on weekly payments of compensation, whether or not subject to a WCC award, are obliged to comply with the Injury management requirements of Chapter 3 of the 1998 Act.
- 3. Section 47 of the 1998 Act requires an Injured Worker to participate and co-operate in the establishment of an Injury Management Plan for the Worker and to comply with obligations under the plan.

As per *PCR Plaster Setting Pty Limited v De Brito* section 52A of the 1987 Act is applicable where an award of compensation exists however, it may be advisable to first seek a review under section 55 of the 1987 Act.

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SEEKING A REVIEW OF A WCC AWARD UNDER SECTION 55 OF THE 1987 ACT

To make an application for a review under section 55 of the 1987 Act there must have been a change in the circumstances/facts that were used as the basis for the decision to grant the award.

The Scheme Agent must ensure that it has evidence clearly substantiating a change of circumstances before applying for a review and onus of proving a change of circumstances will rest with the Scheme Agent.

DECISION MAKING

When making decisions regarding seeking a review of a WCC award, the Scheme Agent must apply their sound decision making model and give consideration to all available information, in a manner free of preference or prejudice.

The Scheme Agent must:

- consider the reasonableness of seeking a review by the WCC;
- ensure the decision to seek a review of an award is evidence based and that the Scheme Agent can satisfy the onus of proving that there has been a change of circumstances from those that were before the decision maker when making the original award;
- ensure the decision to seek a review of a WCC award that may affect the Worker is escalated for internal review prior to the decision being communicated to the Worker;
- ensure decisions are made and effectively communicated within defined time frames (and in accordance with the requirements of section 74 of the 1998 Act and section 54 of the 1987 Act);
- consider all the implications of the decision on the Worker and the Employer (if appropriate); and
- consider any other relevant circumstances.

SEEKING A REVIEW OF A WCC AWARD UNDER SECTION 55 OF THE 1987 ACT – GENERAL PRINCIPLES

The Scheme Agent should be aware of the following general principles that attach to any application for a review of a WCC award under section 55 of the 1987 Act:

- A review under section 55 does not involve an appeal against the facts that were found as a basis for the decision to grant the award;
- A review will occur only where it is established that circumstances that were before the original decision maker at the time of the award, and upon which the findings in relation to the entitlement were made, have changed;
- Relevant "circumstances" are not limited to consideration of a change of medical condition or capacity for work, although in many cases these will constitute the central reason for making an application for review under section 55;
- Other relevant changes in circumstances may include changes in the labour market relative to
 a Worker's ability to obtain suitable employment and/or has found employment. This may also
 include the fact that the worker has completed a course of study, which impacts on his or her
 ability to find suitable employment;
- The onus of proving a "change of circumstances" rests with the party seeking to assert that there has been a "change of circumstances"; and

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• Whether or not a Workers entitlement to weekly Benefits has changed is a separate and different question that is determined by the WCC only after it has been satisfied of the threshold consideration of whether there has been a change of circumstances.

References

Deed, Schedule 1, Clause, 5.3, 5.3.1, 5.4, 5.4.1, Schedule 2, Clause 2.2.4, 2.2.5, 2.2.14, 2.3.1

Legislation Workers Compensation Act 1987 Workplace Injury Management and Workers Compensation Act 1998 WorkCover Guidelines for Claiming Compensation Benefits Part 4

Change of Circumstances Worthington v Alexander [2005] NSW WCC PD 12 Atlas v Bulli Spinners Pty Ltd [1993] NSWCC 17

s52A of the 1987 Act

PCR Plaster Setting Pty Limited v De Brito [2007] NSWWCCPD 159

Overseas Travel Taufia v Nonferral (NSW) Pty Ltd & Another [1995] NSWCC 30

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