

Early Resolution of Common Law Disputes - Guidelines

Background

The intention of this Early Resolution Policy is for Claimant Lawyers and Panel Lawyers to consider early resolution of common law claims where it is appropriate to do so. This may include:

1. Informal discussions and negotiations held between the Panel Lawyer and the Claimant/Claimant's Solicitor; or
2. Formally at the Compulsory Conference.

Purpose of Early Resolution Guidelines

The purposes of these guidelines are to:

1. Focus the attention of the parties on the desirability of resolving claim expeditiously.
2. Enable each party to obtain the information they reasonably need in order to enter into an appropriate settlement and/or to make and consider an appropriate offer; and
3. if an early resolution is not achievable, lay the ground for expeditious conduct of proceedings by:
 - a. undertaking an assessment of the claim at the outset to help inform each party's respective position with respect to liability; and
 - b. narrowing down the relevant issues pertaining to the claim at an earlier stage to minimise time delay.

Other benefits in doing so include:

1. The Claimant can feel they have had the opportunity to "have their day" much earlier in the process.
2. Unnecessary costs burden and time delays for all parties including the Claimant, Employer and lawyers would be significantly reduced.

It is understood that not all claims will be suitable for this early resolution process (e.g. claims that include high risk/sensitive issues or matters where there may be a suspicion of fraudulent behaviour, no entitlement or third party involvement).

Process

All claims are to be lodged with WorkCover and the compliance process pursuant to Section 275 of the *Workers Compensation and Rehabilitation Act 2003* (the Act) is to be completed.

It is understood that prior to any informal discussion or resolution appropriate investigations will be undertaken to determine the liability, quantum and causation positions of the parties. Pursuant to Section 279 of the Act disclosure will have also been completed by the parties to the full extent they are required to by law.

Initial Assessment and Plan

After investigating the event, injury, liability, impairment, economic loss and return to work circumstances in relation to the claim the Panel Lawyer will determine if the matter that is suitable for early resolution by developing a plan within 14 days that sets out:

- a) The assessment carried out by the Panel Lawyer on the claim with respect to each party's position, taking into account a consideration of the needs of the Claimant and the Employer.
- b) A summary of the relevant and real issues in relation to liability, quantum and causation
- c) If there are any concerns that deem the matter inappropriate for early resolution e.g. requirement for further medical information, high risk issues, suspicions of fraud.

Engaging the Employer

Where the Panel Lawyer has determined the matter to be one that is appropriate for an early resolution, the Panel Lawyer contact the Employer to discuss the initial assessment and the proposal for an early resolution of the matter.

Contact with the Claimant's Solicitor

The Panel Lawyer contact the Claimant's Solicitor to:

- a) discuss the claim and understand both party's appetite to consider an early resolution of the claim.
- b) identify through that process any issues that may prevent an early resolution i.e. what is strictly necessary to be done to assess the claim and ensure the claim can be resolved fairly.
- c) Agree that where not already provided, relevant documents be disclosed by each party within an agreed time frame prior to the informal discussion
- d) Discuss what further evidence may be required e.g. medical evidence or consider whether a joint IME is appropriate
- e) Where appropriate, arrange a date for the Informal discussion to take place.
- f) If the matter is not resolved at the informal discussion agree on a timetable of next steps to be taken to progress the claim to resolution, for example setting down a date for the compulsory conference if relevant.