



## **Serious Injury Protocols**

### **Introduction**

These protocols apply to Applications served on VWA on or after 1 September 2005.

These protocols are intended to operate in conjunction with and do not derogate from the obligations contained in *Ministerial Directions S235* of 20 December 2001. The protocols are intended to support the Ministerial Directions which seek to:

- facilitate consistent management of the pre-litigated processes by the Authority;
- facilitate the provision of timely and quality decision making
- provide as efficient a means as possible of delivering appropriate damages to injured workers;
- enable parties to attempt to resolve or compromise claims for appropriate damages without resort to legal process.

These protocols address two primary issues:

1. improving the effectiveness of information exchange, communication and decision making in relation to the Application and Response pursuant to Section 134AB
2. establishing protocols for formal and timely review of a previously denied Application where an Originating Motion has been issued.

The protocols are accompanied by Explanatory Notes. Practitioners are encouraged to read these notes in conjunction with the Protocols.

### **The Protocols**

#### **The Application and Response**

1. Medical Records
  - 1.1 The medical material submitted in support of the Section 134AB Application must be as complete and comprehensive as possible at the time of the lodgement of the Application including, where possible, the relevant past and present treating medical records.
  - 1.2 The Panel practitioner shall, within 30 days of receipt of instructions from the VWA, write to the worker's legal practitioner requesting copies of the records (or where appropriate a medical report) of any relevant treating doctor, specialist or other treating health professional stating whether the whole or any specific part of the record is required.
  - 1.3 If the identity of a treating health professional becomes known at a later date the request for relevant treating records shall be made promptly upon receipt of this information.
  - 1.4 Any material obtained by a worker's practitioner following service of the Application on the VWA, being material of which the worker or the legal

practitioner was not aware at the time of serving the Application but on which the worker wishes to rely, is to be provided to the Panel firm within 7 days of receipt by the worker's legal practitioner.

## 2. Employment Records

- 2.1 The worker's practitioner should ensure full compliance with the requirements of Ministerial Directions Paragraph 5.6(g) to (l) relating to the worker's wage and employment history.
- 2.2 Where possible the worker's practitioner should also include in the application any further relevant details or documentation known to or available to the worker which might assist in the decision making process. (Refer to Explanatory Notes for guidelines).
- 2.3 Where the worker relies upon the pecuniary loss gateway the Panel practitioner, in addition to the material required by Ministerial Direction Paragraph 7.2(b) to (e), should include in the Response such further material as is available and will, where possible, enable the parties to come to an informed conclusion as to the viability of the worker's Application pursuant to the pecuniary loss gateway. ( Refer to Explanatory Notes for guidelines).

## The Originating Motion

3. The Panel practitioner must file and serve an appearance promptly upon receipt of instructions.
4. Early Return Subpoenas and Further Information Exchange
  - 4.1 Where either party has identified evidence to be obtained pursuant to Order 42.10 that party should ensure that subpoenas are issued and served within 28 days of the filing and service of an appearance.
  - 4.2 It is anticipated that the parties will inspect subpoenaed records within the requisite time period and will, wherever possible, avoid the use of "blanket" objections
  - 4.3 The parties are required to complete these steps expeditiously to ensure that the process of production, inspection and copying of documents is, where possible, completed within 60 days of service of the Originating Motion on the Authority.
  - 4.4 Where either party has obtained further material in the course of the Originating motion, being material not in existence at the time of the Application or Response and upon which the party seeks to rely, the material should be provided to the other party within 7 days of receipt by the practitioner.
5. Conference
  - 5.1 Where an Originating Motion has been issued, the proceeding is to be the subject of a formal conference within 90 days of the filing and service of an Appearance. The purpose of this conference is to resolve the "serious injury" Application.

- 5.2 If it is not possible to resolve the Originating Motion the parties should ensure that all issues have been discussed and that each party is confident of the basis upon which the decision has been made and/or maintained.
- 5.3 To facilitate constructive discussion between the parties it is expected that, where possible, a worker's practitioner is in a position at the time of the conference to confirm whether the worker intends to proceed on the basis of both the pain and suffering and pecuniary loss "serious injury" gateways.
- 5.4 Save where explicitly agreed with the Panel practitioner beforehand, it is anticipated that the worker will be present at the conference to provide instructions. Any representative of the Authority, claims agent or employer who is necessary to the decision making process must also be either present or contactable for the purposes of the conference.
- 5.5 Where it is anticipated that a "serious injury" concession will be made the Panel practitioner should, wherever possible, ensure that the practitioner also has instructions in relation to liability and quantum. The worker's practitioner should also, where possible, ensure that the worker's case is sufficiently prepared to facilitate discussion and resolution of all aspects of the claim, including common law resolution.
- 5.6 The Panel practitioner must have a release available for execution by the worker should the claim be resolved at the conference.