

Policy and Procedure regarding use of Consent and Authority comprising Form D to the Ministerial Directions made pursuant to S134AF(1) of the Accident Compensation Act 1985

1. In the course of managing an application brought by a worker pursuant to Section 134AB(4) of the Accident Compensation Act 1985 ("the Act") it may become necessary for the Victorian Workcover Authority (VWA), or legal firm instructed by the VWA, to seek information from the provider of a health service.
2. By Order of the Governor in Council gazetted 12 October 2006 a worker may at the time of making an application pursuant to Section 134AB (4) provide the VWA or a self insurer with a consent and authority to release information and documents. This consent is in the form comprising Form D to the Ministerial Directions made pursuant to S134AF(1) of the Act.
3. In accordance with Form D the consent and authority is only valid until such time as the VWA or self insurer makes a determination under Section 134AB (7).
4. The provision of the consent and authority with the application is not intended to derogate from the responsibility of a worker's legal practitioner to ensure that as far as possible all medical reports, including treaters' notes and records relevant to the determination of "serious injury" and common law damages upon which the worker seeks to rely, are included in the application.
5. In circumstances where the VWA or its legal representatives elect to utilise the authority to seek further information and documents, the authority should be utilised in a considered manner and have proper regard to both the subject matter of the application and the potential relevance of the material sought through utilisation of the authority and consent.
6. Where the VWA or its legal representative seeks information and documents by relying upon the authority and consent the person utilising the authority will:
 - (i) at the same time, advise the worker's legal representative of the use of the authority and provide a copy of the requesting letter;
 - (ii) each letter of request to a provider will indicate that the information collected may be released by the VWA or its legal representative to the worker's legal representative;
 - (iii) subject to being prevented by law from doing so, provide upon written request from the worker's legal representative a copy of the information so obtained by the VWA or its legal representative to the worker's legal representative.
 - (iv) a copy of any information obtained by the VWA or its legal representative, if released to the worker's legal representative, will be provided to the worker's legal representative without charge.

7. For the avoidance of doubt the provision of a Form D does not allow a legal firm instructed by the VWA to request that a medical report be generated nor does it permit the firm to seek any comment from the person to whom the Form D is provided. "To give access to all information and documents" is restricted to information and documents in existence at the time of the request.
8. Copies of any information and documents obtained pursuant to the consent and authority will not be provided to a third party save where the provision of such information and documents is required to assist in the conduct of the worker's claim, including the application or any subsequent common law proceeding arising from the application or otherwise by consent of the worker or worker's legal representative. Examples of such third parties are as follows:
 - Experts engaged by the Authority to provide opinions or to assist it in the conduct of the claim;
 - Counsel engaged by the Authority to appear;
 - A third party identified by the worker or the VWA as a potential tortfeasor in relation to the application or a subsequent common law proceeding arising from the cause of action identified in the application;
 - As provided by this protocol.
9. In the event that disclosure of information or documents to a third party is otherwise required by law and in circumstances not envisaged by this protocol, the worker or the worker's legal representative are to be notified of the request and of the disclosure required by law in such circumstances.