



Serious Injury Explanatory Notes

These Explanatory Notes are to be read in conjunction with the "Serious Injury" protocols effective from 1 September 2005.

Medical records

The provision of comprehensive medical material, in particular the early provision of relevant treating medical records, will:

- assist the Panel practitioner to make a thorough analysis of the medical evidence in support of the application thereby maximising the opportunity for the claim to be conceded as a "serious injury" at the Response date or earlier, if possible;
- ensure that a complete medical appraisal can be made by the medico-legal consultant(s) appointed to examine the worker during the 120 day period leading up to the Response date;
- optimise the opportunities for the parties being fully prepared to confer, either prior to or immediately following the Response Date;
- avoid the costs and delays occasioned by further medical assessments being undertaken after the Response date;
- When making a request for further medical material the panel practitioner should have specific regard to the reasonableness and relevance of each such request in the context of the application. Where the doctor or other health professional has treated the worker in the course of the claim the subject of the Application, the request should also specify the period and/or frequency of treatment or include a printout of the payments for medical treatment.
- If the worker's practitioner is either unwilling or unable to meet the request for treating records, the practitioner should make prompt contact with the Panel practitioner to advise the reasons for the inability or unwillingness to provide the requested records. An informed decision can then be made by the Panel practitioner as to whether these records will need to be sought at a later date pursuant to Order 42.10.

Employment records

The Ministerial Directions make provision for the exchange of material relevant to determining the pecuniary loss "serious injury" gateway and to assist in the subsequent computation of pecuniary loss damages. The protocols are intended to ensure that the material provided by both parties is as comprehensive as possible to facilitate the early determination of both the gateway issue and, if successful, the entitlement to damages.

It is important that the issue of whether the worker is pursuing serious injury through the pecuniary loss gateway be identified as early as possible in the "serious injury" process.



Examples of the relevant information or documentation which may assist in decision making are as follows:

On behalf of a worker:

- a brief description of the worker's job specification or duties of employment at the time of injury;
- details of all qualifications, trade certificates or other qualifications held by the worker;
- details of the award under which the worker was employed with the employer;
- a copy of the applicable EBA or individual contract at the time of injury if available;
- details of the worker's usual hours, shifts and participation in overtime at the time of injury and any changes subsequent to injury;
- any additional income benefits known to the worker and relevant to the computation of earnings;
- details of job applications and/or training undertaken post accident independently of an employer's rehabilitation program.

Where the worker's practitioner is unable to provide the documentation or information envisaged by this protocol the practitioner should communicate this to the Panel practitioner at the time of serving the Application, including advice as to whether it is anticipated further documentation and/or information will be forthcoming.

On behalf of the employer:

- a brief description of the worker's job specifications and or work duties at the time of the incident or injury the subject of the application;
- details of any known changes in the job description or duties of employment at the Response date;
- details of any known changes in the workplace relevant to the calculation of pecuniary loss and/or work capacity eg changes in the availability of standard overtime; standard working hours, shift availability; factory redundancies or closure; requirements for changed skill sets;
- details of the worker's earnings with the employer both pre and post injury (computer printout where available);
- worker's group certificates for 3 years pre-injury to the Response date, where available;
- details of the award under which the worker was employed with the employer, a copy of the EBA and/or individual contract applicable to the worker at the time of injury and the currently applicable EBA and/or contract for an employee employed in the same or a similar capacity to the worker, where available;
- details of the gross annual income (including overtime, bonuses and allowances) for a person employed by the employer;
 - (i) performing work or duties comparable to that or those performed by the worker, or
 - (ii) in the same or similar capacity to the worker;commencing from the date of the injury upon which the worker relies in the Application to the Response date.

This information may be provided by reference to details of award rates (including overtime, bonuses and allowances) over the period and/or by reference to the wage records of comparable employees or to such other



information or documentation as may be relevant to the computation of the worker's actual and potential earnings had it not been for injury.

Where a Panel practitioner is unable to provide the documentation and/or information envisaged by this protocol the practitioner should communicate this to the worker's practitioner at the time of serving the response, including whether it is anticipated that further documentation or information will be forthcoming.

The Originating Motion

ERS and Further Information Exchange

The protocol is intended to ensure the completion of service, inspection and copying of documentation obtained pursuant to Order 42.10 as quickly as possible to enable the formal conference and review to occur in a timely manner.

- In the event that a need for further subpoena is identified following inspection of previously subpoenaed documents or upon receipt of information not previously known to a party, such further subpoena process should be completed as quickly as possible in the circumstances.
- It is desirable that any difficulty being encountered by either party in completing the Order 42 Rule 10 process should be communicated to the other party upon the practitioner becoming aware of this being a potential cause for delay.
- Where a serious injury has been denied the parties should, upon receipt of additional information obtained pursuant to subpoena or otherwise, make every effort to discuss the issues with a view to resolving the Application.

Conference

- Where possible the conference will be conducted at a neutral venue to be agreed by the parties.
- Where the instructions of the VWA, claims agent or employer are required and these representatives are not present at the conference, the Panel practitioner is responsible for ensuring that the application has been reviewed and specific instructions sought prior to the conference. This is in addition to ensuring access to any further instructions which may become necessary during the course of the conference.