



FACT SHEET 5

WORKERS COMPENSATION AND INJURY MANAGEMENT RESOLVING PROBLEMS AND DISPUTES ABOUT WORKERS COMPENSATION CLAIMS

WORKERS COMPENSATION CLAIMS

Sometimes problems and disagreements arise with workers compensation claims in regards to:

- an injured worker not receiving a response from an insurer
- weekly payments
- medical expenses.

Injured workers should always try to resolve their dispute with the insurer first. If necessary WorkCover's Claims Assistance Service (CAS) can provide injured workers and employers with assistance and advice.

KEY POINTS

- CAS helps prevent disputes by informing parties of their legal obligations and encouraging open discussion between them to resolve problems.
- CAS can be contacted on **13 10 50**
- The Workers Compensation Commission (WCC) approaches formal disputes in a similar fashion, through mediation, discussion and if necessary arbitration.

1. No response from the insurer

When an insurer fails to respond to a worker's request within the relevant time frames, the worker can contact CAS. CAS will facilitate a response from the insurer, provided it is not earlier than seven days prior to the expiry of the time limit for determining the claim (generally within 21 days of making the claim except for claims for permanent impairment when the time frame is two months).

CAS will provide the worker with a reference number and a response seven days after the initial contact. The letter will advise of the insurer's actions – eg that the insurer will be sending a letter on a particular date or that they have already sent a letter, which was sent out on a particular day. In the event that the insurer fails to respond to the CAS enquiry, CAS will advise the worker that there has been no response and the worker can lodge an application to resolve a dispute with the Workers Compensation Commission (WCC), attaching the letter from CAS instead of a dispute notice from the insurer.

2. Disagreements about weekly payments or medical expenses

Disagreements about weekly payments usually occur when:

- the injured worker disputes the amount being paid by the insurer or employer
- the insurer declines liability for weekly payments
- the insurer reduces the amount of benefit being paid.

When an injured worker disputes the amount of benefit they are entitled to, they should speak with their case manager requesting a review of the decision. Simply providing further wage details or payslips as evidence of earnings may resolve the disagreement. If the injured worker has spoken to their case manager and they have not been able to resolve the dispute they can contact CAS for further advice and assistance.

Disagreements about medical expenses usually occur when an insurer determines that a specific treatment requested is not 'reasonably necessary', as described in the WorkCover *Guidelines for claiming compensation benefits*.

If an insurer decides to decline liability for payments or treatment, or to reduce weekly payments, they must send the injured worker a written notice advising of their decision. The notice is required to set out, amongst other things:

- the decision – ie decline liability under section 74 of the 1998 Act or reduce benefit under section 54 of the 1987 Act
- all matters in dispute
- the reasons for the decision and issues relevant to the decision
- all documents relevant to the decision
- the procedures for requesting a review of the decision.

There may be instances when an insurer fails to attach all relevant documents and information that is required in the notice. In some instances, the insurer is able to send the relevant documents to your solicitor or doctor. If they have not sent the relevant documents to you, your solicitor or doctor, they have an obligation to remedy the defective notice as soon as they become aware of the defect. The injured worker should contact the insurer and ask them to remedy the defect. If they do not then the injured worker can contact CAS, their union or legal representative to assist them.

3. A decision has been made to decline liability for the claim or to reduce the weekly benefits

Once an injured worker has received a notice from the insurer to decline liability for all or part of the claim, or reduce weekly benefits, they can:

- accept the decision
- contact CAS, their union or legal representative for advice
- request the insurer to conduct a further review of the decision.

Attached to the notice from the insurer will be an application form for the injured worker or their representative to complete. Here the injured worker should explain why they are requesting the review and attach any additional information they think is relevant to the decision.

The insurer is required to respond to the worker in writing within 14 days of receiving the request for a review. The insurer will either decide to accept the claim, or maintain their decision and issue another notice including any additional information relevant to the decision.

If an application for dispute resolution is lodged in the WCC the parties can only rely on information included with the dispute notice and application for review. Therefore, it is important for an injured worker to attach all relevant information at the review stage as they will be precluded from introducing new material after an application is lodged at the WCC.

4. Disagreements about return to work

Disagreements about a worker returning to work can arise about:

- an injured worker's fitness to return to work
- the types of duties a worker can perform
- the duties an employer can provide in the workplace
- the need for rehabilitation and retraining
- other related issues.

CAS is available for advice in relation to disagreements about returning to work. When differences arise between the nominated treating doctor, the employer, insurer and/or the injured worker, a rehabilitation provider¹ or an injury management consultant (IMC)² can assist in the return to work process. The provider or IMC assess the nature of the problem and attempt to negotiate a solution. If the problem cannot be resolved the issue can be referred to the WCC for resolution.

¹ A workplace rehabilitation provider is an organisation approved by WorkCover to provide specialised return to work services.

² An injury management consultant is a registered medical practitioner approved by WorkCover.

5. Lodging an application for dispute resolution with the Workers Compensation Commission

The WCC hears all disputes about entitlements under workers compensation. Detailed information about the services provided by the WCC and how to lodge an application can be found at www.wcc.nsw.gov.au

If the insurer has considered all of the relevant issues in making their decision to decline the claim and the worker still disagrees with the merits of the decision, they can lodge an application to dispute the decision with the WCC. The WCC requires a number of preconditions to be met prior to accepting an application.

Those preconditions include:

- a notice from the insurer that complies with section 74 of the 1998 Act or section 54 of the 1987 Act
- copies of all relevant documents referred to in the notice or application for review
- a copy of the CAS response where the insurer has not responded to a claim or to a request from CAS – if applicable.

For further information about resolving disputes on workers compensation:

- Visit www.workcover.nsw.gov.au
- Phone CAS on **13 10 50**
- Phone WCC on **1300 368 040** or visit www.wcc.nsw.gov.au

Disclaimer

This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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