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5 June 2012

Ms Rachel Callinan
Committee Director
Joint Select Committee on the NSW Workers Compensation Scheme
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email to

E-MAILED
5/6/2012

Dear Ms Callinan

**Inquiry into the NSW Workers Compensation Scheme**
**Additional Supplementary Questions for Slater & Gordon**

I refer to the supplementary questions directed by Mr Mark Speakman MP on 31 May 2012 to Slater & Gordon thus:

1. *"Looking at recommendation #6 on page 25 of your submission:*

   *(a) What is the present position as to times within which agents provide, or are required to provide, material to claimants prior to the commencement of any proceedings?*

   *(b) What are the precise changes which you propose?"*

On behalf of Slater & Gordon I respond as follows:

(a) *What is the present position as to times within which agents provide, or are required to provide, material to claimants prior to the commencement of any proceedings?*

Presently, there is no timeframe within which agents must provide material to claimants prior to the commencement of any proceedings.

Firstly, the system is "front end loaded" system in that any claim or dispute advanced on behalf of a worker in respect of any benefit type must be "duly made" and all evidence upon which the worker intends to rely exchanged with the insurer prior to the commencement of proceedings in the Workers Compensation Commission. Often claims are made by a worker (for example for weekly payments or lump sums or for medical treatment) and the claim is not disputed or responded to, rendering a worker capable of commencing proceedings in the Workers Compensation Commission.

Secondly, the legislation and regulation only provide for exchange of information in the event of a dispute notice being issued such that absent that notice there is no right of access to general medical information by a worker.

**The Legislation and Regulation**

Where the insurer has raised a dispute and issued a Dispute Notice under either section 54 of the 1987 Act or sections 74 or 287A of the 1998 Act, **Regulation 46** (Workers Compensation Regulation 2010) provides that medical reports, including medical reports provided pursuant to section 119 of the 1998 Act, medical certificates, clinical notes, investigator's reports, workplace rehabilitation provider's reports, health service provider's reports, reports of assessments under section 40A, reports obtained by or provided to an employer or insurer that contain information relevant to the claim on which a decision to dispute liability is made and wage details must be referred to and provided to the worker with that Notice.

Regulation 46(3) provides:

*"If an employer or insurer makes a decision to which this clause applies, the employer or insurer must provide a copy of any relevant report to which this clause applies to the worker, as an attachment to a notice under section 74 of the 1998, section 54 of the 1987 Act or section 287A of the 1998 Act, as the case may be, except where the report has already been supplied to the worker and that report is identified in a statement under clause 14(1)(c) or 43(1)(d)."*

This obligation extends to any report so long as the report is relevant to the claim or any aspect of the claim to which the decision relates, whether or not the report supports the reasons for the decision.

No timeframe is provided within Regulation 46 as to the provision of the material. Regulation 46 only requires provision of information and documents in respect of claims or matters **where a dispute notice has issued**.

There is no corresponding regulation which mandates exchange of material or information absent a dispute notice.

**Section 119 of the 1998 Act** provides in sub-clause 5 that :

*"The regulations may make provision for or with respect to requiring an employer or insurer to provide a worker, a worker's legal representative or any other person, within the period required by the regulations, with a copy of any medical opinion or report furnished to the employer or insurer by a medical practitioner in connection with an examination of the worker pursuant the requirement under this section."*

Section 119(6) provides that in the event of failure of an employer or insurer to provide such a report (as required by the regulation), the employer or insurer cannot use the opinion or report to dispute liability to pay compensation or to reduce the amount of compensation to be paid, cannot use the opinion or report for any other purpose prescribed by the regulations, the opinion or report is not admissible in proceedings on such a dispute before the Commission, and the opinion or report may not be disclosed to an Approved Medical Specialist or an Appeal Panel in connection with the assessment of a medical dispute.

**Section 126** of the 1998 Act provides in sub-section 2 that the regulations *may make provision* for or with respect to requiring an employer or insurer in possession of a medical report relating to an injured worker to provide a copy of the report to the worker, the worker's legal representative or any other person if the worker's claim is disputed.

**Section 126(3)** provides that if an employer or insurer fails to provide a copy of the report as required by the regulations then the employer or insurer cannot use the opinion or report to dispute liability to pay compensation, reduce compensation and cannot use the report for any other purpose prescribed by the regulations. Similarly the report is not admissible in proceedings on such a dispute before the Commission and the report may not be disclosed to an Approved Medical Specialist.

The Workers Compensation Regulation only provides for exchange of material and information in circumstances where the insurer or an employer issues a dispute notice. The Regulation does not provide anywhere other than in Regulation 46, for the exchange of material prior to commencement of proceedings in the Commission.

In order to investigate and advance claims for injured workers, regardless of whether there is a dispute notice or not, the worker's legal representative has to have regard to all of the available medical evidence.

The available medical evidence is usually in the possession of the insurer prior to the time of the making of a decision to dispute liability or before a claim for, for example lump sum benefits is advanced.

**Schedule 6** of the Workers Compensation Regulation 2010 sets out the legal costs regime. In Part 3 of Schedule 6 under the heading "Regulated Disbursements", item 4 deals with treating health service providers' reports and item 6 deals with treating health service providers' clinical notes and records. Both provide that a claimant or worker's legal representative cannot recover the fee paid for a treating health service provider's report or treating health service provider's clinical notes and records in the event that the claim or dispute is resolved whether before or after proceedings are commenced, unless a request has been made to the insurer, and the insurer does not provide the documents within 14 days or 7 days as the item permits and only then in if the documents once obtained are served on the insurer.

Typically, it is unnecessary to obtain a treating health service provider's report or treating health service provider's clinical notes and records if they are already in existence on the insurer's file. Obtaining the reports usually results in a duplication of expenditure on a file and necessarily delays both the making of claim and challenging of disputes.

**Timeframes**

There is no timeframe set within Regulation 46, for the provision of information in the event of a dispute. It is common place for insurers not to attach the whole of their claim file or all of the material they have considered in issuing a section 54 notice, section 74 or 287A Notice in defiance of Regulation 46.

Furthermore, as has been demonstrated, nowhere within section 119 or 126 of the WIM Act or within Regulation 46 or Schedule 6, Part 3, is there any timeframe for production other than as stated in Part 3 Item 4 and Item 6 which merely sets an arbitrary period of 7 or 14 days after a request is made of the insurer when a worker may then make a request for the report themselves, generally for material that may readily be available on the insurer's file.

This issue was raised by the Law Society representatives, Roshana May, Brian Moroney, Richard Brennan and Stephen Harris at meetings of the WorkCover Legal and Regulatory Process Working Group from 2006 when the claims guidelines were reissued after the amendment to Schedule 6 of the Workers Compensation Regulation 2003.

Repeated requests have been made to WorkCover to remedy the situation in relation to exchange of documentation prior to the making of a claim or pursuit of a claim or dispute in the Commission. The only change was the insertion of clause 46 (formerly clause 43 of the 2003 Regulation).

This matter was last raised with Mr Cameron Player, now Director Agent Operations WorkCover NSW following the last meeting of the WorkCover Legal and Regulatory Process Working Group on 6 December 2011. I **enclose** a copy of an email directed to Cameron Player on 7 February 2012 and his response 13 February 2012 concerning this 'issue'.

Mr Player conceded:

*"I agree with you that there is no logical reason that copies of a worker's medical information or treating doctor's reports on a scheme agent's file shouldn't be provided to them or their representatives on request, and we will encourage scheme agents to take a sensible and practical approach to such request in future."*

He referred to the WorkCover Guidelines for Claiming Compensation Benefits gazetted in April 2009, as supportive both in the governing principle regarding 'timeliness', the aims supporting 'prompt management', 'timely and sound decision making' and 'reducing disputes' and more specifically in Part 2, clause 5 final paragraph, page 20 (**enclosed**), the specific provision regarding 'insurer actions when served with the claim' which states:

*'Upon request from a worker or a worker's representative, a copy of medical information or a report from a treating medical practitioner should be supplied.'*

Injured workers (claimants) are reliant on insurers complying with the WorkCover Guidelines for Claiming Compensation Benefits when they seek material and information under section 126 of the 1998 Act. Typically, the response from insurers and scheme agents is to decline to provide information where there is no dispute in existence, that is, 'no dispute notice has been issued by the insurer'.

Injured workers are also reliant upon the Claims Assistance Service (CAS) (an advisory service for employers and workers) acting on a 'complaint' concerning the non-provision of information upon request.

(b) *What are the precise changes which you propose?*

Firstly, absent any regulatory or legislative change, the WorkCover Guidelines for Claiming Compensation Benefits, should specifically provide for the exchange of information of the kind referred to in Regulation 46(1)(a), (b), (c), (e), (f), (g) and (i) upon appropriate request by the worker or the worker's legal representative with appropriate timeframes provided (14 days or 21 days to provide the information), regardless of whether there is a dispute. Appropriate penalties for failure to provide the information and documentation should also be contemplated.

Section 126 of the 1998 Act requires amendment in sub-section 2 to remove the words *"if the worker's claim is disputed"*. This then permits amendment of the Regulation to include a further Regulation in the event of no dispute.

The Workers Compensation Regulation requires amendment to give full force and effect to section 119 (5) and (6), and Section 126 specifically where no dispute notice has issued from an insurer, by introduction of a provision similar to clause 46 which deals specifically with provision of information of the type referred to above to an injured worker's representative or the injured worker upon request prior to the issue of a dispute notice and upon request.

In addition, appropriate time frames are required to ensure compliance and appropriate sanctions or penalties are required in the event of non-compliance, apart from the penalty of inability to rely on that information in any proceedings before the Commission as suggested by sub-clause 6 of section 119.

**Documents Enclosed:**

1. Section 119 1998 Act
2. Section 126 1998 Act
3. Clause 46 Workers Compensation Regulation 2010
4. Schedule 6 Part 3, Items 1 - 6.
5. Email to Cameron Player dated 7 February 2012
6. Email from Cameron Player of 13 February 2012
7. Page 20 of 2009 WorkCover Guidelines for Claiming Compensation Benefit

Yours faithfully

Roshana May
Practice Group Leader
**SLATER & GORDON**

Encl.

# New South Wales Consolidated Acts



## WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998 - SECT 119

**Medical examination of workers at direction of employer**

**119 Medical examination of workers at direction of employer**

(cf former s 129)

(1) A worker who has given notice of an injury must, if so required by the employer, submit himself or herself for examination by a medical practitioner, provided and paid by the employer.

(2) A worker receiving weekly payments of compensation under this Act must, if so required by the employer, from time to time submit himself or herself for examination by a medical practitioner, provided and paid by the employer.

(3) If a worker refuses to submit himself or herself for any examination under this section or in any way obstructs the examination:

(a) the worker's right to recover compensation under this Act with respect to the injury, or

(b) the worker's right to the weekly payments,

is suspended until the examination has taken place.

(4) A worker must not be required to submit himself or herself for examination by a medical practitioner under this section otherwise than in accordance with the WorkCover Guidelines or at more frequent intervals than may be prescribed by the WorkCover Guidelines.

(5) The regulations may make provision for or with respect to requiring an employer or insurer to provide a worker, a worker's legal representative or any other person, within the period required by the regulations, with a copy of any medical opinion or report furnished to the employer or insurer by a medical practitioner in connection with an examination of the worker pursuant to a requirement under this section.

(6) If an employer or insurer fails to provide a copy of an opinion or report as required by the regulations under subsection (5):

(a) the employer or insurer cannot use the opinion or report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the opinion or report for any other purpose prescribed by the regulations for the purposes of this section, and

(b) the opinion or report is not admissible in proceedings on such a dispute before the Commission, and

(c) the opinion or report may not be disclosed to an approved medical specialist or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

# New South Wales Consolidated Acts



## WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998 - SECT 126

**Copies of certain medical reports to be supplied to worker**

**126 Copies of certain medical reports to be supplied to worker**

(cf former s 134)

(1) In this section:
"insurer" means a licensed insurer or a former licensed insurer.
"medical report", in relation to an injured worker, means a written report by:

(a) a medical practitioner by whom the worker has been referred to another medical practitioner for treatment or tests related to the injury, or

(b) a medical practitioner who has treated the injury, or

(c) a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (a) or (b) in connection with treatment of, or tests related to, the injury.

(2) The regulations may make provision for or with respect to requiring an employer or insurer in possession of a medical report relating to an injured worker to provide a copy of the report to the worker, the worker's legal representative or any other person, if the worker's claim is disputed.

(3) If an employer or insurer fails to provide a copy of a report as required by the regulations under subsection (2):

(a) the employer or insurer cannot use the opinion or report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the report for any other purpose prescribed by the regulations for the purposes of this section, and

(b) the report is not admissible in proceedings on such a dispute before the Commission, and

(c) the report may not be disclosed to an approved medical specialist or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

# New South Wales Consolidated Regulations



## WORKERS COMPENSATION REGULATION 2010 - REG 46

**Access to certain medical reports and other reports obtained by insurer: sections 73 and 126 of 1998 Act**

**46 Access to certain medical reports and other reports obtained by insurer: sections 73 and 126 of 1998 Act**

(1) This clause applies to the following types of reports that an employer or insurer has in the employer's or insurer's possession:

(a) medical reports, including medical reports provided pursuant to section 119 of the 1998 Act (Medical examination of workers at direction of employer),

(b) medical certificates,

(c) clinical notes,

(d) investigators' reports,

(e) workplace rehabilitation providers' reports,

(f) health service providers' reports,

(g) reports of assessments under section 40A (Assessment of incapacitated worker's ability to earn) of the 1987 Act,

(h) reports obtained by or provided to an employer or insurer that contain information relevant to the claim on which a decision to dispute liability is made,

(i) wage details required to be supplied under section 43 (2) of the 1987 Act where a decision has been made to decline payment of, or reduce the amount of, weekly benefits, but only if such details have not already been supplied to the worker.

(2) This clause applies to the following decisions of an employer or insurer relating to an injured worker:

(a) a decision to dispute liability in respect of a claim, or any aspect of a claim (in circumstances requiring the insurer to give the worker a notice and reasons under section 74 of the 1998 Act),

(b) a decision to discontinue payment, or to reduce the amount of weekly benefits (in circumstances requiring the insurer to give the worker a notice

of intention under section 54 of the 1987 Act),

(c) a decision on the review under section 287A of the 1998 Act of a decision described in paragraph (a) or (b) that confirms the original decision.

(3) If an employer or insurer makes a decision to which this clause applies, the employer or insurer must provide a copy of any relevant report to which this clause applies to the worker, as an attachment to a notice under section 74 of the 1998 Act, section 54 of the 1987 Act or section 287A of the 1998 Act, as the case may be, except where the report has already been supplied to the worker and that report is identified in a statement under clause 14 (1) (c) or 43 (1) (d).

(4) The obligation in this clause to provide a copy of a report applies to any report that is relevant to the claim or any aspect of the claim to which the decision relates, whether or not the report supports the reasons for the decision.

(5) If the employer or insurer is of the opinion that supplying a worker with a copy of a report would pose a serious threat to the life or health of the worker or any other person, the employer or insurer may instead supply the report:

(a) in the case of a medical report, medical certificate or clinical notes-to a medical practitioner nominated by the worker for that purpose, or

(b) in any other case-to a legal practitioner representing the worker.

(6) If, on the application of an employer or insurer, the Authority is satisfied that supplying the worker with a copy of the report would pose a serious threat to the life or health of the worker or any other person and that supplying the report as provided by this clause would not be appropriate, the Authority may:

(a) direct that the report be supplied to such other persons as the Authority considers appropriate, or

(b) make such other directions as the Authority thinks fit.

## Part 3 - Regulated disbursements

| Item | Disbursement | Applicable provisions |
|---|---|---|
| 1 | Country/interstate loadings (including travel and accommodation expenses) | Payable in accordance with the *Motor Accidents Compensation Regulation 2010* , Schedule 1, clause 3 or 4 (as relevant).<br>**Note:** Clause 15 of Part A applies for this purpose. |
| 2 | Conduct money to comply with notice for the production of documents | Where the producer is a party other than the worker-nil payable<br>Where the producer is the worker-an amount sufficient to meet the reasonable expenses of complying with the notice is payable |
| 3 | Conduct money to comply with direction for the production of documents | An amount sufficient to meet the reasonable expenses of complying with the direction is payable<br>In the case of medical practitioners, the term "sufficient to meet the reasonable expenses" is an amount calculated in accordance with the AMA Resource-Based Relative Value Scale as in force from time to time<br>In the case of production by a government agency-the standard rate applied by that agency is payable |
| 4 | Treating health service provider's report | If a claim or dispute is resolved whether before or after proceedings commenced:<br>Claimant:(a) nil fee payable, unless paragraph (b) applies, or(b) fee allowed in accordance with any applicable fee order where:(i) request for report made to insurer, and(ii) either:• insurer does not provide report within 14 days, or• report supplied by insurer does not address the report requirements of the claimant, and(iii) report is served on insurerInsurer: fee allowed in accordance with any applicable fee order |
| 5 | Report of independent medical examination by an appropriately qualified and experienced medical practitioner in accordance with WorkCover Guidelines<br>Fee allowed in accordance with any applicable fee order where paragraph (a) or (b) opposite applies<br>**Note:** A supplementary report that complies with clause 66 gives rise to a further entitlement to costs under this item, if the supplementary report otherwise satisfies the provisions of this item. | (a) If a claim or dispute is resolved before proceedings are commenced-a report of the kind referred to in clause 65 has been served on the other party(b) If a dispute is resolved after proceedings are commenced-a report of the kind referred to in clause 65 has been admitted in the proceedings or disclosed to an approved medical specialist |
| | | If a claim or dispute is resolved whether before or after proceedings commenced:<br>Claimant:(a) nil fee payable, unless paragraph (b) |

| | | |
|---|---|---|
| 6 | Treating health service provider's clinical notes and records | applies, or(b) payment in accordance with AMA Resource-Based Relative Value Scale as in force from time to time or any applicable fee order (the latter to prevail over the former) where:(i) request made to insurer, and(ii) insurer does not provide within 7 days, and(iii) clinical notes and records are served on insurerInsurer:(a) nil fee payable if clinical notes and records are served by claimant under paragraph (b) above, or(b) otherwise, payment in accordance with AMA Resource-Based Relative Value Scale as in force from time to time or any applicable fee order (the latter to prevail over the former) |
| 7 | Fee for the provision of independent financial advice by a qualified financial adviser for a commutation by agreement that is approved by the Authority and registered with the Commission | Upper limit of $1,000, on the production of account or receipt |

## Roshana May

**From:** Roshana May
**Sent:** Tuesday, 7 February 2012 3:18 PM
**To:**
**Cc:** Stephen Harris; Brian Moroney
**Subject:** Workers Compensation NSW - Meeting 6 December 2011

**Attachments:** img-2071034-0001.pdf

img-2071034-0001.
pdf (395 KB)

Dear Cameron

When the Law Society 'representatives' met with you and Geniere on 6 December 2011, we were asked whether there was anything that could be done (without the need for gazetted change) that would assist legal practitioners in the area of Workers Compensation.

I mentioned the 'Section 126 requests for documents'. I was recently reminded by an exchange of correspondence with a Scheme Agent that I had not set my request out in writing.

Typically, when we are instructed to investigate a claim for benefits - whether it is section 40 makeup pay or more often lump Sum entitlements - we make a request of the insurer to provide medical reports of the treating doctors and specialists in their possession, in addition to a list of payments and a copy of the Claim form.

The 'old' section 126 of the WIM Act used to authorise the transfer of this material between insurer and worker. Section 126 no longer does that in that it allows for a regulation to be made but unfortunately the Regulation nowhere deals with what is contemplated by Section 126 WIM.

The Regulation (Reg 46) only mandates the hand over of information and documents in the event of a denial of liability.

This was first pointed out the WorkCover when the Claims Guidelines were introduced in 2006. The Claims Guidelines contained a passage about the need for co-operation between worker and insurer and Part 5 of the Guideline for Claiming Compensation hinted that an insurer should hand over material requested from the file in the spirit of co-operation with the worker.

The Guideline was changed in 2009. The relevant reference in Part 5 was removed.

Since last year insurer typically respond to a request for such information with a terse letter explaining that as there is no dispute there is no obligation to provide a copy of the reports.

Bear in mind that what we want are reports about the worker prepared by threatening doctors and specialists, not 'IME' reports.

We are required to make the request because of the Costs schedule otherwise, we can be met with opposition to meet the cost of obtaining clinical notes and documents form such doctors without first making a request of the insurer.

The situation is ludicrous. There is no privilege in the documents and I have often wondered if a GIPA application to WorkCover would reveal them anyway.

So, advising the Scheme Agents not to refuse such requests would ease some considerable pain and expenses in processing these often simple claims.

I have enclosed an example letter to insurer and there typical response.

Yours faithfully

Roshana May
Practice Group Leader

Slater & Gordon
Level 5, 44 Market Street | Sydney NSW 2000 | Australia T +

-----Original Message-----
From:
Sent: Tuesday, 7 February 2012 11:34 AM
To: Roshana May
Subject: Scan Data from FX-71C6C5

Number of Images: 6
Attachment File Type: PDF

Device Name: SYD-APII7000-342742
Device Location:

**Roshana May**

**From:** Player, Cameron [r
**Sent:** Monday, 13 February 2012 8:18 AM
**To:** Roshana May
**Cc:** Stephen Harris; Brian Moroney
**Subject:** RE: Workers Compensation NSW - Meeting 6 December 201
**Attachments:** claiming_compensation_benefits_guidelines_5903.pdf

Hi Roshana,

**Re: Treating Doctors and Specialists reports**

Thanks for raising this issue with me. Two issues that might assist that I'll split up. Firstly, information supporting decisions, secondly treating medical information;

**Information supporting decisions**

As you mention the *1998 Act* (s.72 & s.126) and the *2010 Reg* (clause 46) include provisions about information to be supplied when certain decisions are made. Importantly clause 46(4) confirms that the obligation is broad and is for insurers to provide a copy of;

*'any report that is relevant to the claim or any aspect of the claim to which the decision relates, whether or not the report supports the reasons for the decision'.*

This broad wording is also specifically mentioned in the *Workcover Guidelines for Claiming Compensation Benefits* gazetted in April 2009 (attached), in Part 3, clause 4, regarding information required supporting a s.74 Notice Disputing Liability.

**Treating medical information**

I agree with you that there is no logical reason that copies of a workers medical information or treating doctors reports on a scheme agents file shouldn't be provided to them or their representatives on request, and we will encourage scheme agents to take a sensible and practical approach to such requests in future.

This approach is supported by the *Workcover Guidelines for Claiming Compensation Benefits* gazetted in April 2009, by both the governing principle regarding 'timeliness', the aims supporting 'prompt management', 'timely and sound decision making' and 'reducing disputes' and more specifically in Part 2, clause 5 final paragraph, page 20 attached, the specific provision regarding *'Insurer Actions when Served with a claim'* which states;

*'Upon request from a worker or a workers' representative, a copy of medical information or a report from a treating medical practitioner should be supplied.'*

Thanks again for raising this issue with me.

I have raised it with my team, including the managers of each of the scheme agents, and have asked them to have discussions with each of the scheme agents to remind them of the above information.

**Cameron Player**
Director, Agent Operations | Workers Compensation Insurance Division
**WorkCover NSW**
Add: Level 4, 1 Oxford Street, Darlinghurst, NSW, 2010

Email:
WORK SAFE ▸ HOME SAFE

-----Original Message-----
From: Roshana May
Sent: Tuesday, 7 February 2012 3:23 PM
To: Player, Cameron
Cc: Stephen Harris; Brian Moroney
Subject: Workers Compensation NSW - Meeting 6 December 201

Dear Cameron

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I mentioned the 'Section 126 requests for documents'. I was recently reminded by an exchange of correspondence with a Scheme Agent that I had not set my request out in writing.

Typically, when we are instructed to investigate a claim for benefits - whether it is section 40 makeup pay or more often lump Sum entitlements - we make a request of the insurer to provide medical reports of the treating doctors and specialists in their possession, in addition to a list of payments and a copy of the Claim form.

The 'old' section 126 of the WIM Act used to authorise the transfer of this material between insurer and worker. Section 126 no longer does that in that it allows for a regulation to be made but unfortunately the Regulation nowhere deals with what is contemplated by Section 126 WIM.

The Regulation (Reg 46) only mandates the hand over of information and documents in the event of a denial of liability.

This was first pointed out the WorkCover when the Claims Guidelines were introduced in 2006. The Claims Guidelines contained a passage about the need for co-operation between worker and insurer and Part 5 of the Guideline for Claiming Compensation hinted that an insurer should hand over material requested from the file in the spirit of co-operation with the worker.

The Guideline was changed in 2009. The relevant reference in Part 5 was removed.

Since last year insurer typically respond to a request for such information with a terse letter explaining that as there is no dispute there is no obligation to provide a copy of the reports.

Bear in mind that what we want are reports about the worker prepared by threatening doctors and specialists, not 'IME' reports.

We are required to make the request because of the Costs schedule otherwise, we can be met with

opposition to meet the cost of obtaining clinical notes and documents form such doctors without first making a request of the insurer.

The situation is ludicrous. There is no privilege in the documents and I have often wondered if a GIPA application to WorkCover would reveal them anyway.

So, advising the Scheme Agents not to refuse such requests would ease some considerable pain and expenses in processing these often simple claims.

I have enclosed an example letter to insurer and there typical response.

Yours faithfully

Roshana May
Practice Group Leader
Slater & Gordon
Level 5, 44 Market Street | Sydney NSW 2000 | Australia T +'

are claimed).

The worker may correct the error at any time. When the error is corrected, the claim is then made and the insurer must determine it within 21 days of the correction being notified to them.

The insurer is also to notify the employer within 7 days that a claim has been made by their worker.

If the insurer cannot find a current policy that covers a claim within 7 days after the claim is made, then the insurer is to either:

- contact the employer and person who made the claim, and request more information in order to identify the policy. If the policy still cannot be identified, then the insurer is to inform the employer and the person who made the claim that the insurer is not the current insurer. The insurer must then refer the claim to WorkCover's Claims Assistance Service (CAS) on 13 10 50; or
- pass the claim to the current insurer if known. (May be identified by a request for an employer's past claims experience from the new insurer or from the cancellation request made by the employer)
- pass the information in writing on to the worker or the worker's representative.

Upon request from a worker or a worker's representative, a copy of medical information or a report from a treating medical practitioner should be supplied. If the insurer is of the opinion that supplying the worker with a copy of a medical report would pose a serious threat to the life or health of the worker or any other person, the insurer may instead supply the medical report to a medical practitioner nominated by the worker for that purpose.

## 6. Evidence to Support a Decision on Liability

Information which the insurer can use to inform their decision on liability includes the initial report of injury, the claim form, the WorkCover medical certificate completed by the nominated treating doctor (and signed by the worker), further information received from the worker and the responses made by the worker, employer and doctor during any contact made with them by the insurer.

It is the role and responsibility of the insurer to gather sufficient information to enable them to make a soundly based decision on liability and on any other aspect of the claim within the prescribed time-frame.

When seeking a report, especially from medical practitioners, an insurer must state clearly that the worker will have an entitlement under the legislation to a copy of the report.

Gaining objective, evidence based medical information from the nominated treating doctor, which explains and clarifies issues regarding the injury, treatment and any period of incapacity, is particularly important.

When a decision is made to deny liability, all documents relevant to that decision must be made available to the worker, as set out in Part 3, Clause 4.7.

## 7 Accepting Liability

When liability is accepted, the insurer must notify the worker and employer that workers compensation benefits will commence and that they will include the provision of reasonably necessary services as set out in Division 3 of Part 3 of the 1998 Act.