



Victoria Government Gazette

No. S 51 Monday 1 June 1998
By Authority, Victorian Government Printer

SPECIAL

Accident Compensation Act 1985 MINISTERIAL DIRECTIONS SECTIONS 98 AND 98A COMPENSATION CLAIMS

1. Introduction

These are Directions for procedures for the determination of claims for compensation under Sections 98 and 98A of the **Accident Compensation Act 1985** ("the Act") and are made pursuant to Sections 104A and 20C of the Act and are also guidelines under Section 54(4) of the Act.

2. Objectives of these Directions

The objectives of these Directions are to:

- (a) facilitate a practical means by which Sections 98 and 98A claims can be speedily resolved in a co-operative, equitable and efficient manner that provides adequate and just compensation to workers without any party unnecessarily incurring legal costs or engaging in protracted legal processes; and
- (b) minimise the flow of Sections 98 and 98A claims into the Conciliation and Court systems.

3. Application of these Directions

These Directions apply to claims given, served or lodged on the employer, authorised insurer, self insurer or the Authority after the date upon which they are published in the Government Gazette.

4. Definitions

The following definitions apply for the purposes of these Directions:

"authorised insurer" is the relevant authorised insurer having liability in respect of the claims;

"dispute" means a dispute in connection with a claim between the worker and the employer, or the Authority or an authorised insurer or a self insurer;

"Medical Panel" means a Medical Panel under the Act;

"medical question" means a medical question as defined in Section 5 (1) of the Act.

"medical report" means a medical report as defined in Section 104(15) of the Act;

"offer" means an offer in settlement or compromise of the claim, and includes an offer of a nil amount;

"Section 104A conference" means a meeting, discussion or series of meetings or discussions between:

the worker or the worker's legal practitioner; and

the Authority, or the authorised insurer, or the self insurer, or the employer of the worker, or their respective legal practitioner;

in relation to the claim at or during which such meeting, discussion or series of meetings or discussions the employer, the Authority or authorised insurer, or self insurer or their respective legal practitioner makes an offer or offers and the worker or the worker's legal practitioner either accepts one of these offers, or makes a counter offer or counter offers in relation to the claim;

"self insurer" is a body corporate approved as a self insurer under Part V of the Act;

"the Authority" is the Victorian WorkCover Authority;

"the claim" is the claim for compensation under Section 98 alone or under Sections 98 and 98A of the Act submitted through the "Claim for Compensation - Maims (Section 98) - Pain and Suffering (Section 98A)" claim form;

“the receipt date” means the date the claim was received by the Authority, authorised insurer or self insurer;

“the worker” is the worker who has made the claim;

DIRECTIONS

5. Lodgement of the claim and provision of medical reports by the worker

- (a) The claim must be given or served by the worker on the employer or where authorised by the Act lodged on the authorised insurer or Authority in the form approved by the Authority. At the time at which the claim is given, served or lodged the worker must serve a copy of all medical reports the worker intends to tender or the substance of which the worker intends to adduce in evidence in any proceedings relating to the claim; and
- (b) If at the time the claim is served the worker has suffered more than one of the injuries mentioned in the Table appended to Section 98 of the Act then, unless it is not reasonably practicable to do so, the claim must include each such injury.

6. Worker’s Affidavit

- (a) Where the worker seeks compensation pursuant to Section 98A of the Act, the worker or the worker's legal practitioner must, at the time of the service of the claim, provide the employer or Authority or authorised insurer or self insurer with an Affidavit sworn or affirmed by the worker which details the nature and extent of the pain and suffering as defined by Section 98A (5) of the Act resulting from the injury or injuries which is or are the subject of the claim.
- (b) Where the worker seeks compensation pursuant to Section 98 (5) of the Act in respect of an injury which was sustained prior to 1 December 1992 the worker or the worker's legal practitioner must, at the time of the service of the claim, provide the employer or the Authority or authorised insurer or self insurer with an Affidavit sworn or affirmed by the worker which details the nature and extent of the pain and suffering and other non-pecuniary loss resulting from the injury or injuries which is or are the subject of the claim.
- (c) The Affidavit of the worker provided in accordance with Directions 6(a) or 6(b) must contain the following information:-
 - (i) The injuries complained of and the date or dates those injuries occurred;
 - (ii) The circumstances under which the injuries arose;
 - (iii) The date the worker first sought medical treatment in respect of the injuries the subject of the claim;
 - (iv) The nature of the treatment received by the worker as a consequence of the injuries the subject of the claim including:-
 - (a) any operative procedure he or she has undergone;
 - (b) any period of hospitalisation;
 - (c) any medical treatment; and
 - (d) any further treatment proposed;
 - (v) Particulars of all absences from employment or periods on light or modified duties as a consequence of the injuries the subject of the claim;
 - (vi) The nature and extent of the:-
 - (a) actual pain; or
 - (b) distress or anxiety;

suffered or likely to be suffered by him/her resulting from the injuries or any necessary treatment; and
 - (vii) The manner in which the injuries and resultant impairment the subject of the claim, has affected or is likely to affect the worker's:-

- (a) ability to perform pre-injury duties; and
- (b) ability to engage in hobbies, recreation, sporting pursuits and domestic activities undertaken prior to the injuries.
- (d) The failure of the worker or the worker's legal practitioner to comply with Directions 6(a), 6(b) or 6(c) may result in the claim (with respect to compensation pursuant to Section 98, Section 98A or Section 98(5)) being suspended if the worker or the worker's legal practitioner is so notified by the Authority, authorised insurer or self insurer within 14 days of the receipt date.

7. Arranging Section 104A conferences

- (a) Within 60 days of the receipt date the Authority, authorised insurer or self insurer must consult the worker or the worker's legal practitioner to arrange a Section 104A conference to be completed within 90 days of the receipt date;
- (b) Should the Authority, authorised insurer or self insurer fail to comply with Direction 7(a) then the worker or the worker's legal practitioner must consult with the Authority or authorised insurer or self insurer to arrange for a Section 104A conference to be completed within 90 days of the receipt date;
- (c) The authorised insurer must notify the employer of the date, time and venue of the Section 104A conference arranged in accordance with Directions 7(a) or 7(b); and
- (d) If a Section 104A conference is not concluded within 90 days of the receipt date and if it is considered by the Authority or authorised insurer or self insurer or their respective legal practitioner that exceptional circumstances exist then by agreement with the worker or the worker's legal practitioner, the time within which a Section 104A conference may be concluded may be extended by the Authority or authorised insurer or self insurer.

8. Provision of Medical Reports to the Worker Prior to the Section 104A Conference

The Authority or authorised insurer or self insurer must serve on the worker or the worker's legal practitioner not less than seven days prior to the commencement of the Section 104A conference, a copy of all medical reports which the Authority or authorised insurer or self insurer intends to tender or the substance of which it is intended to adduce in evidence in any proceedings relating to the claim.

9. Attendance at Section 104A Conferences

- (a) The worker must attend a Section 104A conference in person if requested to do so by the Authority, authorised insurer or self insurer;
- (b) If the worker does not attend a Section 104A conference, but such a conference is attended by the worker's legal practitioner, then the worker must be readily available to give instructions to the legal practitioner in relation to any offer made; and
- (c) The Authority or the authorised insurer or self insurer or their respective legal practitioner shall attend a Section 104A conference. If the conference is attended only by the relevant legal practitioner, then the representative of the Authority or authorised insurer or self insurer must be readily available to give instructions to the legal practitioner in relation to any offer or counter-offer made in the course of the Section 104A conference.

10. Offers at Section 104A conferences

- (a) The Authority or authorised insurer or self insurer or their respective legal practitioner must have the appropriate authority or instructions so as to be able to make an offer in the course of the Section 104A conference;
- (b) Prior to the conclusion of the Section 104A conference, the Authority, authorised insurer or self insurer or their respective legal practitioner must make an offer; and
- (c) The parties or their respective legal practitioners to the Section 104A conference are not restricted in the number of offers or counter offers which may be made by them.

11. Concluding a Section 104A conference

- (a) A Section 104A conference is not concluded until the worker either accepts an offer made by the Authority or authorised insurer or self insurer or makes a counter-offer in response to each offer made by the Authority, authorised insurer or self insurer;
- (b) At the completion of a Section 104A conference, the worker or the worker's legal practitioner and the Authority or authorised insurer or self insurer or their respective legal practitioners shall complete and sign the form marked "A" annexed to these Directions so as to accurately record:
 - (i) all medical reports and the substance of such reports served in accordance with Directions 5 and 8;
 - (ii) all offers and counter-offers made at or during the Section 104A conference; and
 - (iii) any settlement or compromise reached in relation to the claim;
- (c) The original of the form marked "A" shall be retained by the worker or the worker's legal practitioner. A copy of the completed and signed form marked "A" shall be retained by the Authority or authorised insurer or self insurer.

12. Medical Panels

- (a) Upon completion of a Section 104 A conference if the Authority, authorised insurer or self insurer is satisfied the claim is unresolved because of a dispute concerning a medical question or medical questions, the Authority, authorised insurer or self insurer may refer that medical question or those medical questions to a medical panel for an opinion in accordance with Division 3 of Part III of the Act; and
- (b) If any medical question has been referred by the Authority, authorised insurer or self insurer under Direction 12(a) for an opinion by a Medical Panel:
 - (i) the Authority, authorised insurer or self insurer shall make no further offers in respect of the claim until the Medical Panel's opinion is received; and
 - (ii) any further offer made by the Authority, authorised insurer or self insurer in respect of the claim must be consistent with that opinion.

13. Section 104A conference costs

- (a) Where a legal practitioner represents the worker at a Section 104A conference the following legal fee is payable by the Authority, authorised insurer or self insurer to that legal practitioner providing that the claim in its totality resolves for monetary consideration prior to the issue of proceedings:
 - (i) where the worker recovers compensation under Sections 98 and 98A or where applicable in respect of an injury which was sustained prior to 1 December 1992 the worker recovers compensation under Sections 98 and 98(5), \$745; or
 - (ii) where the worker recovers compensation under Section 98 alone for injury pre or post 1 December 1992, \$445;together with the reasonable costs of medical reports;
- (b) Once proceedings are commenced in relation to the claim, the fee referred to in Direction 13(a) is no longer payable;
- (c) If the worker or the worker's legal practitioner fails to comply with Direction 5(b) then no legal fees or costs of medical reports shall be payable by the Authority, authorised insurer or self insurer in respect of the Section 104A conference; and
- (d) No legal fee is payable in respect of a Section 104A conference where the claim is one which:
 - (i) is solely for hearing loss; or
 - (ii) involves hearing loss and any other claim which may be made pursuant to Section 98

or Section 98A of the Act, but the claim is resolved for compensation which relates solely to hearing loss.

14. Timing of Section 104A conferences

- (a) If the worker lodges a referral for conciliation of a dispute with the Senior Conciliation Officer in accordance with Division 2 of Part III of the Act before a Section 104A conference has been concluded then, pursuant to Section 54(4) of the Act, the Senior Conciliation Officer shall direct the parties to the dispute hold and/or conclude a Section 104A conference prior to proceeding further with the conciliation;
- (b) The Senior Conciliation Officer may make recommendations to the parties to a dispute regarding the timing and location of a Section 104A conference;
- (c) If the worker refers a dispute for conciliation, then the worker must, at the time at which such a referral for conciliation is lodged, provide to the Senior Conciliation Officer a copy of the form "A" as referred to in Direction 11(b); and
- (d) The Authority or authorised insurer or self insurer must, within seven days of receiving notification of the referral of the dispute for conciliation, provide to the Senior Conciliation Officer a full copy of all the reports served in accordance with Directions 5 and 8 and the Affidavit material served by the worker.

15. Conciliation

- (a) The Conciliation Officer must, having regard to the need to be fair, economical, informal and quick and having regard to the objects of the Act, make all reasonable efforts to conciliate in connection with a dispute and to bring the parties to agreement; and
- (b) Where the dispute does not resolve at conciliation then provided Section 104 (7) applies the Conciliation Officer must issue a certificate in accordance with Section 104 (8) of the Act.

16. Statutory Offer and Counter Statutory Offer

- (a) In accordance with Section 104(9) of the Act, the Authority, authorised insurer or self insurer must, within fourteen days after the certificate issued by the Conciliation Officer has been served on the Authority or authorised insurer or self insurer, make a statutory offer in writing in settlement or compromise of the claim. The statutory offer in settlement or compromise of the claim shall be in the form marked "B" annexed to these Directions and must be served on both the worker and the worker's legal practitioner;
- (b) The worker or the worker's legal practitioner must acknowledge receipt of the statutory offer within seven days of the receipt of that offer to the Authority, authorised insurer or self insurer;
- (c) The statutory offer shall remain open to be accepted by the worker or the worker's legal practitioner for a period of 21 days from receipt of that offer by the worker or the worker's legal practitioner;
- (d) If the worker or worker's legal practitioner does not accept the statutory offer the worker or the worker's legal practitioner must within 21 days of receipt of the statutory offer make a counter statutory offer in writing in settlement or compromise of the claim in accordance with Section 104 (11A)(b) of the Act. The counter statutory offer in settlement or compromise of the claim shall be in the form marked "C" annexed to these directions and must be served upon the Authority, authorised insurer or self insurer;
- (e) The Authority, authorised insurer or self insurer or their legal practitioner must acknowledge receipt of the counter statutory offer within 7 days of the receipt of that offer to the worker or the worker's legal practitioner;
- (f) The counter statutory offer shall remain open to be accepted by the Authority, authorised insurer or self insurer for a period of 21 days from the date of receipt of that offer by the Authority, authorised insurer or self insurer; and
- (g) Once the counter statutory offer is made and a period of 21 days from the date of receipt of

that offer has expired, no further offers of settlement or compromise of the claim shall be made by the Authority, authorised insurer or self insurer or their respective legal practitioners other than reinstatement of the statutory offer, subject to the imposition of full costs penalties by the Authority, authorised insurer or self insurer.

17. Proceedings

- (a) Where proceedings are instituted in respect of the claim by the worker or worker's legal practitioner prior to the period in which the counter statutory offer can be accepted by the Authority, authorised insurer or self insurer expiring, the Authority, authorised insurer or self insurer can accept the counter statutory offer within 21 days of receipt of that offer providing the worker or worker's legal practitioner agree to forego any claim for payment of party/party costs by the Authority, authorised insurer, employer or self insurer in connection with the proceedings;
- (b) Proceedings in relation to the claim should be instituted in the correct jurisdiction having regard to the quantum of the claim;
- (c) Failure to institute proceedings in relation to the claim in the correct jurisdiction, having regard to the outcome (whether by way of judgment or settlement) of the claim, will result in cost penalties imposed by Sections 50 and 50A of the Act; and
- (d) The Authority, authorised insurer, self insurer and/or their legal practitioners must ensure that the operation of Sections 50 and 50A of the Act is enforced by making appropriate applications and submissions to the Magistrates Court or County Court when the need arises to facilitate the operation and enforcement of those sections.

18. Suspension of Sections 98 and 98A claims

Section 104A(5) of the Act enables suspension provisions to be included in the Ministerial Directions for non compliance. These Ministerial Directions, apart from Direction 6(d), intentionally do not rely on the suspension provisions of Section 104A(5) to assist in the resolution of claims. It is anticipated that all parties will embrace the spirit of the Ministerial Directions and co-operate in endeavouring to achieve the objectives of these Ministerial Directions.

ROGER M. HALLAM - MLC
Minister for Finance
Minister for Gaming

SECTION 104A CONFERENCE FORM

FORM A

1. CLAIM DETAILS

WorkCover Claim Number:.....Sections 98 and 98A Ref. No.:.....

Sections 98 and 98A Claim lodged on/...../.....

Claimant's Surname:..... Given Names:.....

Claimant's Legal Practitioner:.....

Employer:.....

The Authority/authorised insurer/self insurer:.....

The Authority/authorised insurer/self insurer's Legal Practitioner:.....

Compensation Claimed: **Section 98 only**

(Tick appropriate box) **Sections 98 & 98A**

2. CONFERENCE DETAILS

Conference Date:/...../.....

Conference Location:

Conference Attendees:

Claimant (name)

Claimant's Legal Practitioner (name):.....

Employer Representative (name)

Authorised insurer/self insurer Representative (name)

The Authority Representative (name)

The Authority/authorised insurer/self insurer's Legal Practitioner (name):.....

Other (name):.....

3. OFFERS

<u>The Authority/authorised insurer/self insurer</u>			<u>Claimant</u>		
<u>Section 98</u>	<u>Section 98A</u>	<u>Total</u>	<u>Section 98</u>	<u>Section 98A</u>	<u>Total</u>
.....
.....
.....

If claim rejected or partially rejected by the Authority, authorised insurer or self insurer provide details:.....
.....
.....

4. CONFERENCE RESULT

Claim Settled: Settlement Details:

Claim Not Resolved:

Claim Withdrawn:

(Page 2 of Form A)

5. MEDICAL EVIDENCE EXCHANGED

CLAIMANT MEDICAL EVIDENCE

Date	Doctor	Number of pages including attachments	Description of Attachments

THE AUTHORITY/AUTHORISED INSURER/SELF INSURER MEDICAL EVIDENCE

Date	Doctor	Number of pages including attachments	Description of Attachments

6. WORKER'S RIGHTS IF WORKER DISPUTES DECISION MADE

If you dispute the Authority/authorised insurer/self insurer's decision in respect of the claim you have the following rights:

- *To take the matter to Conciliation (Sections 53 to 62 of the Act);*
To refer a dispute to Conciliation you must lodge a Request for Conciliation with the Senior Conciliation Officer, WorkCover Conciliation Service, 624 Bourke Street, Melbourne, 3000 within 60 days of receiving this notice. The Senior Conciliation Officer may increase that time but only upon application in appropriate circumstances. Request for Conciliation forms are available from this office or WorkCover Conciliation Service (telephone: 1800 635 960). Conciliation is a free service. Please see the attached brochure for information regarding WorkCover Conciliation Service.
- *To apply to either the County Court or the Magistrates' Court to determine any question or matter arising out of this dispute (Sections 39 and 43 of the Act);*
However, before Court proceedings can be commenced, the dispute must have been referred to Conciliation. Once this has been done, you may then only commence Court proceedings after a Conciliation Officer issues a certificate stating that the Conciliation Officer is satisfied all reasonable steps have been taken by the claimant to settle the dispute. A solicitor can advise you about legal action..

7. DECLARATION

We confirm that a Section 104A Conference in accordance with "The Ministerial Directions for the Determination of Sections 98 and 98A Claims" issued on the.....day of1998 has been conducted and the information provided in this form is true and correct.

Signature of Officer Representing
the Authority, authorised insurer, self insurer
Signature.....Date:.....

OR
Signature of Legal Practitioner Representing
the Authority, authorised insurer or self insurer
Signature.....Date:.....

NOTICE OF STATUTORY OFFER

FORM B

DATE:/...../.....

TO: *(The Worker or the Worker's Legal Practitioner)*.....

RE: *(Worker's Name)*.....

(Employer's Name).....

Sections 98 and 98A Claim lodged on/...../.....;

WorkCover Claim No.:Sections 98 and 98A Ref. No.:

This notice is provided in accordance with Direction 16 of the "Ministerial Directions for the Determination of Sections 98 and 98A claims" issued on theday of.....1998. Pursuant to Section 104 (9) of the Accident Compensation Act 1985 ("the Act") **(name of the Authority/authorised insurer/self insurer)**..... makes a statutory offer of \$..... in full settlement of your/your client's claim for compensation under Section 98/Sections 98 and 98A of the **Accident Compensation Act 1985**.

CONDITIONS OF STATUTORY OFFER

1. Pursuant to Direction 16(b) of the above Ministerial Directions, the claimant or the claimant's legal practitioner must acknowledge this statutory offer within 7 days of its receipt.

2. This statutory offer will remain open for 21 days from the date of its receipt by the claimant/claimant's legal practitioner or the issue of legal proceedings in relation to the claim, whichever occurs first.

3. Acceptance of this offer will result in payment of a legal fee of \$..... to the legal practitioner who represented the claimant in relation to the claim at the Section 104A conference.

4. Pursuant to Section 50 (2A) of the Act this statutory offer and the statutory counter offer made by the claimant will be used to determine the payment of legal costs in the event that a judgement or order is made in relation to a claim under Section 98 or Section 98A claim by the Magistrates or County Court as follows:-

- Where the amount of the judgement or order is not less than 90% of the counter statutory offer made by the claimant, but is greater than the statutory offer made by the Authority, authorised insurer or self insurer, the Authority, authorised insurer or self insurer will be responsible for payment of the claimant's party and party costs and its own costs.
- Where the amount of the judgement or order is equal to or less than the statutory offer made by the Authority, authorised insurer or self insurer, the claimant must pay the party and party costs of the Authority, authorised insurer or self insurer and is responsible for his /her own legal costs.
- Where the amount of the judgement or order is greater than the statutory offer made by the Authority, authorised insurer or self insurer, but less than 90% of the counter statutory offer made by the claimant, each party will be responsible for their own legal costs.

Signature of Officer Representing
the Authority, authorised insurer or self insurer

Signature.....Date:.....

OR

Signature of Legal Practitioner Representing
the Authority, authorised insurer or self insurer

Signature.....Date:.....

NOTICE OF COUNTER STATUTORY OFFER

FORM C

DATE:/...../.....

TO: **(the Authority, authorised insurer or self insurer)**.....

RE: **(Worker's Name)**.....
(Employer's Name).....

Sections 98 and 98A Claim lodged on/...../.....;

WorkCover Claim No.:Sections 98 and 98A Ref. No.:

This notice is provided in accordance with Direction 16 of the "Ministerial Directions for the Determination of Sections 98 and 98A claims" issued on theday of.....1998. Pursuant to Section 104(11A)(b) of the **Accident Compensation Act 1985** ("the Act") (the worker) will accept the sum of \$..... in full settlement of his/her claim for compensation under Section 98/Sections 98 and 98A of the **Accident Compensation Act 1985**.

CONDITIONS OF COUNTER STATUTORY OFFER

1. Pursuant to Direction 16(e) of the above Ministerial Directions the Authority, authorised insurer or self insurer or their legal practitioner must acknowledge this counter statutory offer within 7 days of its receipt.

2. This counter statutory offer will remain open for 21 days from the date of its receipt by the Authority, authorised insurer or self insurer or their legal practitioners.

3. Acceptance of this counter statutory offer will result in payment of a legal fee of \$..... to the legal practitioner who represented the claimant in relation to the claim at the Section 104 A conference .

4. Pursuant to Section 50(2A) of the Act the statutory offer and this counter statutory offer made by the claimant will be used to determine the payment of legal costs in the event that a judgement or order is made in relation to a claim under Section 98 or Section 98A by the Magistrates or County Court as follows:-

- Where the amount of the judgement or order is not less than 90% of the counter statutory offer made by the claimant, but is greater than the statutory offer made by the Authority, authorised insurer or self insurer, the Authority, authorised insurer or self insurer will be responsible for payment of the claimant's party and party costs and its own costs.
- Where the amount of the judgement or order is equal to or less than the statutory offer made by the Authority, authorised insurer or self insurer, the claimant must pay the party and party costs of the Authority, authorised insurer or self insurer and is responsible for his /her own legal costs.
- Where the amount of the judgement or order is greater than the statutory offer made by the Authority, authorised insurer or self insurer, but less than 90% of the counter statutory offer made by the claimant, each party will be responsible for their own legal costs.

Signature of Claimant

Signature.....Date:...../...../.....

OR

Signature of Legal Practitioner

Representing Worker

Signature.....Date:...../...../.....

Accident Compensation Act 1985
MINISTERIAL DIRECTIONS

1. Preamble

These are directions with respect to procedures under section 135A of the **Accident Compensation Act 1985** ("the Act") and are made pursuant to sections 135AB and 20C of the Act.

2. Objectives of these Directions

The objectives of these directions are to ensure that:

- (a) procedures under section 135A of the Act are as efficient a means as possible of delivering fair compensation to injured workers, managed in a consistent manner by authorised insurers and self insurers and not subject to being circumvented by the misuse of legal processes.
- (b) all applications under the Act are the subject of quality decision making by authorised insurers and self insurers.
- (c) in cases where "serious injury" status is granted, every possible attempt is made by workers, the Authority, insurers, self insurers and their legal advisers to settle cases, without resort to legal processes.
- (d) proceedings to which s135A applies currently before the Courts are the subject of conferences at which the parties make all reasonable attempts to resolve the proceedings.

3. Definitions

In these directions:

"the Act" means the Accident Compensation Act 1985

"the amendment Act" means the **Accident Compensation (Miscellaneous Amendment) Act 1997**.

"application" means an application for a determination of degree of impairment under Section 135A(2B) of the Act.

"the Authority" means the Victorian WorkCover Authority.

"authorised insurer" is the relevant authorised insurer of the employer of the worker.

"self insurer" is a body corporate approved as a self insurer under Part V of the Act.

"the advice" means the advice of the Authority, authorised insurer or self insurer referred to in Section 135A (2D) and (2DA).

"the Section 135A(2DE) conference" means a meeting, discussion or series of meetings or discussions begun in accordance with Section 135A (2DE) of the Act between:

- the worker or the worker's legal practitioners; and
- the Authority, or an authorised insurer, or a self insurer or the employer of the worker, or their respective legal practitioner;

at or during which such meeting, discussion or series of meetings or discussions the employer, the Authority or authorised insurer, or self insurer or their respective legal practitioner makes an offer or offers and the worker or worker's legal practitioner either accepts one of these offers, or makes a counter offer or counter offers in relation to the claim and at the conclusion of which, if the claim is not settled, the Authority, authorised insurer or self insurer makes a statutory offer in writing, settlement or compromise of the claim in accordance with Section 135A(2DE)(b).

"the response date" means the response date as defined in Section 135A(19).

"offer" means an offer in settlement or compromise of the proceedings and includes an offer of a nil amount.

"insurers solicitor" means the firm of solicitors appointed to represent the Authority, authorised insurer or self insurer in the defence of an application or proceedings in accordance with section S135A.

“**conference facilitator**” means a person drawn from the Victorian Bar approved by the Authority to act as a facilitator of Section 135A(2DE) conferences or the conferences referred to in Direction 12.

“**the claim**” means the common law proceeding which a worker proposes to bring after his or her injury is determined to be serious by an authorised insurer, self insurer or Court.

4. Application of these Directions

These directions apply to;

- (a) Applications given, served or lodged after the commencement of section 47 of the amendment Act.
- (b) Applications to which Section 135A(18A) of the amendment Act applies, given served or lodged prior to the commencement of section 47 of the amendment Act.
- (c) All proceedings whether commenced before or after the commencement of section 47 of the amendment Act, or claims, to which section 135A of the Act applies.

5. Applications

Applications are to be:

- in a form approved by the Authority; and
- must be accompanied by:
 - a copy of all medical reports; and
 - affidavits attesting to such other material;

existing when the application is made and of which the worker or his or her legal representative is aware and on which the worker intends to rely, or the substance of which the worker intends to adduce in evidence, in proceedings in accordance with this section or in any related proceedings.

- (a) The approved form for applications is Form A attached to these directions.
- (b) Authorised insurers and self insurers are to acknowledge receipt of applications in writing, recording the date on which the application was received and the date by which the advice in respect of the application is to be provided.
- (c) All applications are to be the subject of referral to Solicitors authorised to represent the Authority or self insurers for response within 120 days.
- (d) Applications must be accompanied by an affidavit of the worker.
- (e) The affidavit of the worker must contain the following information:
 - (i) The limb of section 135A(19) relied upon to justify the claim of “serious injury”.
 - (ii) The injuries complained of.
 - (iii) The date the injuries occurred.
 - (iv) A description of the manner in and circumstances under which the injuries arose.
 - (v) A statement of why the employer or any other person is responsible for the injuries.
 - (vi) When and from whom the worker has received treatment in relation to the injuries.
 - (vii) An explanation of the effect of the injuries on the worker’s employment capacity.
 - (viii) An explanation of the effect of the injuries on the worker’s social, recreational and domestic capacity.
 - (ix) Particulars of the worker’s claim for past and future economic loss with exhibited tax returns or other financial documents evidencing such claims.
- (f) Affidavits from non-medical expert witnesses must contain the following information:
 - (i) The qualifications of the expert.
 - (ii) The opinion of the expert.

- (iii) The information, method, material, tests and investigations relied upon by the expert in coming to that opinion.
- (g) Affidavits from other witnesses must contain the substance of any evidence of the deponent on which the worker intends to rely or adduce in any proceedings in accordance with the section or in any related proceedings.
- (h) If for the purposes of preparing an Affidavit from a non medical expert witness in accordance with Direction 5(f), the Plaintiff's legal representative and the witness require access to an employer's premises, that access to the part of the employer's premises where the injury occurred is to be granted by the employer.
- (i) Affidavits are to comply with Order 43 of the County Court Rules.

6. The Advice

The advice is to be accompanied by:

- a copy of all medical reports; and
- affidavits attesting to such other material;

existing when the application is made and of which the employer, Authority, authorised insurer or self insurer or the legal representative of any of them is aware and on which they intend to rely or the substance of which they intend to adduce in evidence in proceedings in accordance with the section or in any related proceedings.

- (a) Affidavits from non medical expert witnesses must contain the following information:
 - (i) the qualifications of the expert;
 - (ii) the opinion of the expert;
 - (iii) the information, method, material, tests and investigations relied upon by the expert in coming to that opinion.
- (b) Affidavits from other witnesses must contain the substance of any evidence of the deponent on which the employer, Authority, authorised insurer or self insurer intends to rely or adduce in any proceedings in accordance with the section or in any related proceedings.
- (c) The employer, Authority, authorised insurer or self insurer must provide an affidavit as to and copies of all relevant documents which the employer has in its possession.
- (d) The other material provided by the employer, Authority, authorised insurer or self insurer must include in affidavit form, the substance of reports of any surveillance and exhibited thereto any surveillance film on which they intend to rely or the substance of which they intend to adduce in evidence in proceedings in accordance with the section or in any related proceedings.
- (e) Affidavits are to comply with Order 43 of the County Court Rules.

7. Rebuttal

Section 135A(2DC) of the Act provides that a worker within 28 days of receiving the advice, may give to the Authority, authorised insurer or self-insurer an affidavit attesting to such further material in rebuttal of the material (other than medical reports) attested to in affidavits accompanying the advice.

An affidavit provided pursuant to section 135A(2DC) is to provide the following information:

- (a) identification of the affidavit which it seeks to rebut.
- (b) the aspect of that affidavit which it seeks to rebut and the facts, matters, things or documents which are relied upon in respect of that rebuttal.

8. Serious Injury Determinations

The reports and affidavits provided by the worker pursuant to Directions 5 and 7 and the reports and affidavits provided to the worker pursuant to Direction 6 shall constitute the information on which the Authority, authorised insurer or self insurer determines whether the worker has a serious injury and no other reports or information shall be relied upon.

9. Conferences

- (a) A conference facilitator is to be appointed to the claim by the Authority, authorised insurer or self insurer within five days of the response date.
- (b) The conference facilitator is to manage the conference process in such manner as the conference facilitator thinks fit and to make all reasonable efforts to bring the parties to agreement.
- (c) The conference facilitator is to arrange the Section 135A(2DE) conference to commence within 21 days after the response date.
- (d) The Section 135A(2DE) conference is to be attended by the worker, a representative of the Authority, authorised insurer or self insurer able to give instructions in relation to the claim, and their legal representatives.

10. Offers

- (a) The Authority, authorised insurer or self-insurer must make a statutory offer under section 135A(2DE)(b) of the Act which is as far as possible a fair assessment of the worker's entitlement to damages where it is considered the worker is likely to establish that entitlement.
- (b) Section 135A(2DE) provides that the Authority, authorised insurer or self-insurer make a statutory offer in writing in settlement or compromise of the claim no later than 60 days after the response date.

The statutory offer by the Authority, authorised insurer or self-insurer is to be recorded by the conference facilitator in Form B attached to these Directions and is to be open for acceptance for 21 days.

- (c) Section 135A(2DE)(c) provides that if the worker does not accept that offer within 21 days after it is made, the worker before the expiration of that period must make a statutory counter offer in settlement or compromise of the claim.

The statutory counter offer is to be recorded by the conference facilitator in Form C attached to these Directions and is to be open for acceptance for 21 days.

11. Applications for Determinations to which Section 135A(18A) of the Act applies

The following directions apply to applications for determinations made prior to 12 November 1997 to which Section 135A(18A) of the Act applies.

- (a) Direction 5 applies to the affidavits given by the worker.
- (b) Direction 6 applies to the advice of the Authority, authorised insurer or self insurer.
- (c) The medical reports and affidavits attesting to other material must be given by the worker to the Authority, authorised insurer or self insurer by 30 November 1998.
- (d) Where the authorised insurer or self insurer determines that the worker has a serious injury, Directions 9 and 10 apply to the claim.

12. Existing Proceedings

- (i) In order to reduce the number of cases in the County Court list, where serious injury determinations and claims for damages remain unresolved, I make the following directions in relation to the procedures to be adopted by the Authority's panel solicitors with respect to the various types of proceedings which were on foot at 12 November 1997, pursuant to Section 135AB of the **Accident Compensation Act 1985**.
- (ii) Procedures adopted by the Authority's panel solicitors are to be implemented in a manner consistent with the County Court Rules of Civil Procedure and existing orders made by the court in particular cases.

12.1 Cases where the serious injury question remains unresolved; applications for leave to proceed under Section 135A(4)(b), Bowles v. Coles Myer cases and Writs issued pursuant to Section 135A(2D)

- (a) The Authority, authorised insurers and self insurers are by 30 September 1998 to review all of these cases and grant serious injury certificates or confirm decisions to deny them where appropriate.
- (b) The Authority, authorised insurers, self insurers or their legal advisers should endeavour to initiate an exchange of medical reports and other relevant information to enable a considered and careful review of the serious injury determination to occur, and if necessary should seek enabling orders from the Court.
- (c) If the Authority, authorised insurer, self insurers or their legal representatives consider that they have insufficient information to comply with Direction 12.1(a), they are to apply to the Authority to have a conference facilitator appointed to the proceeding.
- (d) The conference facilitator is to:
 - (i) to endeavour to arrange for a conference in relation to the serious injury issue to be completed by 30 September 1998, to be attended by the worker, a representative of the Authority, authorised insurer or self insurer able to give instructions in relation to the claim, and their legal representatives
 - (ii) take all reasonable steps to ensure that the parties have exchanged sufficient information to enable a proper review of the serious injury determination to occur.
 - (iii) otherwise be subject to the directions of the Court.

12.2. Proceedings Claiming Damages Where Serious Injury Status Has Been Granted

- (a) The Authority, authorised insurers, self insurers or their legal advisers should endeavour to initiate a full exchange of all evidence including all medical reports on which all parties intend to rely or the substance of which they intend to adduce in evidence in the proceedings, as well as all reports and material to relied upon in relation to the issues of liability and the assessment of damages and if necessary should seek enabling orders from the Court.
- (b) By 31 December 1998, the Authority, authorised insurers, self insurers and their legal advisers are to conduct a review of all available evidence in the proceedings and to ensure that an offer to settle the proceedings is made to the Plaintiff which is as far as possible a fair assessment of the worker's entitlement to damages where it is considered the worker is likely to establish that entitlement.
- (c) If the Plaintiff or his or her legal representative wishes to avail themselves of the opportunity to participate in a conference with a view to settling the proceedings, they may apply to the Authority to have a conference facilitator appointed to the proceedings.
- (d) The conference facilitator is to:
 - (i) endeavour to arrange for a conference to be completed within 60 days of his or her appointment, to be attended by the worker, a representative of the Authority, authorised insurer or self insurer able to give instructions in relation to the claim, and their legal representatives; and
 - (ii) take all reasonable steps to ensure that the parties have exchanged sufficient information to enable the parties to make an assessment of the strengths and weaknesses of their cases; and
 - (iii) make all reasonable efforts to bring the parties to agreement to settle the proceedings
 - (iv) otherwise be subject to the directions of the Court
- (e) Either at the conference or within 21 days after it, the Authority's, authorised insurer's or self insurer's legal representative is to make a final offer in settlement of the proceedings.

The conference is not to be regarded as completed until the final offer has been made. The final offer can be a nil offer.

- (f) The final offer by the Authority, authorised insurer or self insurer is open to be accepted for not less than 21 days.
- (g) The final offer is to be made as a formal Offer of Compromise to which the County Court Rules apply and which the worker will only be able to accept after its expiry with the payment of full cost penalties.

13. Failure to Comply with these Directions

- (a) Failure to comply with Directions 5(e), 5(f), 5(g) or 5(h) means that the period referred to in sub-section 135A(2D) ceases to run until the direction has been complied with.
- (b) The Authority may recover from firms of solicitors representing authorised insurers any file for proceedings in which the Authority considers a bona fide offer under section 135A(2DE)(b) has not been made.
- (c) In the event of an employer, authorised insurer, self insurer or insurer's solicitor failing to comply with Directions 6(a), (b) or (c), the Authority may determine that the party at fault is responsible for bearing any or all of the costs associated with that failure to comply.

14. Employers' Responsibilities

- (a) Employers who are respondents to applications or proceedings in accordance with Section 135A of the Act must:
 - (i) Make available to the Authority, authorised insurer or the solicitors appointed to represent them in respect of the application or proceedings all relevant documents and information relating to the application or proceedings.
 - (ii) Forward to the Authority, authorised insurer or the Solicitors appointed to represent them in respect of the application or proceedings any document related to the application or proceeding received from the worker or his or her solicitors.
 - (iii) Co-operate in the defence of the application or proceedings.
 - (iv) Comply with Direction 5(i).
- (b) In the event of an employer failing to comply with Direction 14(a) the Authority may determine that the employer is responsible for bearing any or all of the costs associated with that failure to comply.

15. Insurer's Responsibilities

Section 135A(2DB) provides that if the Authority, authorised insurer or self insurer fails to advise the worker in writing within 120 days of receiving the application of its determination or refusal to make a determination in respect of the application, the worker is deemed to have suffered a serious injury.

The Authority will be monitoring authorised insurer's who fail to meet the 120 day deadline prescribed in Section 135A (2DB) resulting in a deemed serious injury. Neglect in this area will result in a review of the insurers licence.

16. Fees on Successful Applications Under section 135A (2B) of the Act.

- (a) Where a worker recovers damages after an application and conference, the set fees set out below will be payable in respect of that application and conference, but the fee is to be only recoverable if and when the worker is successful in obtaining an award of damages.
- (b) For Solicitors' professional costs, the set fees shall be:
 - (i) in respect of an application and conference:-
\$4,500.00
 - (ii) where the application was made without the accompanying material referred to in Direction 5 and a conference only occurs:-
\$1,500.00
 inclusive of Counsel's fees.

- (c) In respect of medical reports relied upon by the worker, the worker is entitled to recover as a disbursement the reasonable costs of:
 - (i) one medical report from each treating medical practitioner treating the worker at the time of bringing his or her application.
 - (ii) one medical report per speciality relevant to the injury alleged to be and accepted as or determined to be serious.
- (d) In respect of non medical expert reports, the worker is entitled to recover as a disbursement reasonable fees for relevant and necessary reports.
- (e) In addition to the fees referred to in (c) and (d), the worker is entitled to recover reasonable interpreters' fees and travel allowances payable in accordance with the County Court Scale.
- (f) I further direct that the Authority shall have the power to amend from time to time as it sees fit the fees set out above.

ROGER M. HALLAM - MLC
Minister for Finance
Minister for Gaming

**FORM A
PRESCRIBED SECTION 135A FORM OF APPLICATION**

Worker Details:

Employer Details:

(Name, Date of Birth, Residential Address
and Telephone Number)

(Name and Address of Employer on which
claim is being made)

Claim number of the injury for the subject
application:

Application submitted by:

(Legal representative's address and
telephone number).

How exactly was the injury sustained:

Injuries sustained:

Injuries in respect of which a determination of impairment is sought:

Has a claim been lodged for a Table of Maims payment pursuant to Section 98/98A?

Yes/No Date;.....

If legally represented, the name of the firm.

Person(s) whom you believe to be at fault:

_____ (Name and Address)

_____ (Name and Address)

On what basis are you alleging that you have sustained a Serious Injury (Section 135A (19)?

- Serious long-term impairment or loss of body function
- permanent serious disfigurement
- Severe long-term mental or severe long-term behavioural disturbance or disorder
- Loss of foetus

Medical reports accompanying the application:

- 1.
- 2.
- 3.
- 4.
- 5.

1 Affidavits from non expert witnesses:

- 1.
- 2.
- 3.
- 4.
- 5.

Signed:.....

(Worker)

Date:.....

Affidavits from expert witnesses:

- 1.
- 2.
- 3.
- 4.
- 5.

Documentary evidence supporting claim for past and future economic loss:

- 1.
- 2.
- 3.
- 4.
- 5.

Signed.....

(Legal Representative)

Date:.....

Section 135A(2DE)(b) Statutory Offer

Worker:

Employer:

Insurer/Self Insurer:

**Date of Worker's Application under
Section 135A(2B)**

Statutory offer for the purposes of Section 135A(2DE)

(Amount in words)

(\$ _____)
(Figure)

.....
Worker Authority,	Worker's Legal Representative	Legal Representative of the Authorised Insurer or Self Insurer

Date: _____

FORM C
Section 135A(2DE)(c) Statutory Counter Offer

Worker:

Employer:

Insurer:

**Date of Worker's Application under
Section 135A(2B)**

Statutory offer for the purposes of Section 135A(2DE)(c)

(Amount in words)

(\$ _____)
(Figure)

.....
Worker Authority,	Worker's Legal Representative	Legal Representative of the Authorised Insurer or Self Insurer

Date: _____

Gazette Services

The *Victoria Government Gazette* (VGG) is published by The Craftsman Press Pty. Ltd. for the State of Victoria and is produced in three editions.

VGG General is published each Thursday and provides information regarding Acts of Parliament and their effective date of operation; Government notices; requests for tenders; as well as contracts accepted. Private notices are also published.

VGG Special is published any day when required for urgent or special Government notices. VGG Special is made available automatically to subscribers of VGG General.

VGG Periodical is published when required and includes specialised information eg. Medical, Dental, Pharmacist's Registers etc.

Subscriptions

VGG is available by three subscription services:

The Victoria Government Gazette

General and Special - \$170.00 each year

General, Special and Periodical - \$227.00 each year

Periodical - \$113.00 each year

Subscriptions are payable in advance and accepted for a period of one year. All subscriptions are on a firm basis and refunds will not be given.

All payments should be made payable to The Craftsman Press Pty. Ltd.

Subscription enquiries:

The Craftsman Press Pty. Ltd.

125 Highbury Road, Burwood Vic 3125

Telephone: (03) 9926 1233

Fax: (03) 9926 1292

The Victoria Government Gazette is published by The Craftsman Press Pty. Ltd. with the authority of the Government Printer for the State of Victoria
© State of Victoria 1998

ISSN 0819-5471

This publication is copyright. No parts may be reproduced by any process except in accordance with the provisions of the Copyright Act.

Products and services advertised in this publication are not endorsed by The Craftsman Press Pty. Ltd. or the State of Victoria and neither of them accepts any responsibility for the content or the quality of reproduction. The Craftsman Press Pty. Ltd. reserves the right to reject any advertising material it considers unsuitable for government publication.

Address all inquiries to the Government Printer for the State of Victoria

1 Macarthur Street

Melbourne 3002 Victoria Australia

Subscriptions

The Craftsman Press Pty. Ltd.

125 Highbury Road, Burwood

Victoria, Australia 3125

Telephone enquiries (03) 9926 1233

Facsimile (03) 9926 1292

Retail Sales

Information Victoria Bookshop

356 Collins Street Melbourne 3000.

Telephone enquiries 1300 366 356

City Graphics

2nd Floor, 4 Bank Place

Melbourne 3000

Telephone enquiries (03) 9600 0977

Price Code B