



PAYMENT OF CLAIMANT LEGAL COSTS IF PROFESSIONAL COSTS OR DISBURSEMENTS ARE DISPUTED

This operational instruction outlines the approach the Scheme Agent is to adopt to ensure that queries about the cost of professional services and disbursements such as medical report/s claimed by Workers' solicitors are dealt with appropriately and promptly. The approach is designed to avoid a delay in payment of legal costs and disbursements that are not in dispute.

As background, representatives of the Law Society have advised WorkCover that scheme agents (or their legal representatives) are unreasonably challenging the costs claimed for both professional services and the medical reports that are submitted as part of the resolution process at the Workers Compensation Commission.

The fee payable for legal services and medical reports is regulated, as are the requirements for requesting such reports. Requests to independent medical examiners are governed by the *Guidelines for Independent Medical Examinations*. Requirements for requesting reports from treating health practitioners are specified in the *Workers Compensation Regulation*, that is, where a request for the report is made to the Scheme Agent and either the Scheme Agent does not provide the report within 14 days or the report/s provided do not address the specific question of the Worker's solicitor.

When a dispute is resolved in favour of the Worker, the Worker's solicitor will claim costs and disbursements under *Schedule 6 of the Workers Compensation Regulation 2003*.

Where the Scheme Agent questions these costs, the Scheme Agent should –

- Promptly advise the solicitor of the item/s in question and their reason/s and attempt to resolve the problem; or
- If the problem cannot be resolved, refer the matter as a costs assessment to the Workers Compensation Commission; and
- Pay for the items that are not in dispute.

Under no circumstances is the Scheme Agent to utilise commercial firms for the purposes of reviewing costs or negotiating amounts that are outside of the relevant fee schedule for either the professional service or the medical examination and report. The Scheme Agents legal provider, who conducted the case on their behalf, can be asked for guidance in relation to a query about professional services but ensuing actions are to follow the points above.

All fees paid are to be in accordance with the relevant gazetted Schedules – The Legal Costs Schedule for legal practitioners and the Workplace Injury Management and Workers Compensation (Medical Examinations and Reports) Order for medical examinations and reports.

The Scheme Agent is to ensure that staff responsible for checking and authorising costs and disbursements, and the legal firms who act for the Scheme Agent, are advised of, and comply with, this operational instruction.

| | |
|---|--|
| Operational Instruction – Payment of Claimant Legal Costs if Professional Costs or Disbursements are Disputed | Prepared by: Provider & Injury Management Services |
| Version: 1.0 | Issue date: January 2009 |
| Revision: 0 | Review date: January 2010 |
| Page 1 of 1 | TRIM file 2009/000466 |