

WORKCOVER INTERIM PAYMENT DIRECTION GUIDELINES

Workplace Injury Management and Workers Compensation Act 1998

EXPLANATORY NOTE

These guidelines are made pursuant to sections 291 and 376 (1) of the *Workplace Injury Management and Workers Compensation Act 1998* (referred to in these guidelines as the 1998 Act) and refer in particular to the following provisions of the 1998 Act:

- section 267 (duty to commence weekly payments following initial notification of injury)
- section 274 (claims for weekly benefits – liability to be determined within 21 days)
- section 279 (claims for medical expenses – liability to be accepted within 21 days)
- section 292 (expedited assessment)
- section 295 (disputes to which Part 5 of Chapter 7 of the 1998 Act applies)
- section 297 (directions for interim payment of weekly payments or medical expenses compensation)
- section 298 (period for which interim payment of weekly payments can be directed)
- section 299 (revocation of Interim Payment Direction)
- section 300 (failure to comply with Interim Payment Direction)
- section 301 (effect of payment under Interim Payment Direction)
- section 378 (reconsideration of decisions).

The guidelines set out the procedures for making and determining an application for an Interim Payment Direction under Part 5 of Chapter 7 of the 1998 Act.

These guidelines replace guidelines dated 27 October 2006 and published in the Government Gazette No. 129.

These guidelines commence on 1 May 2009.

These guidelines are intended to assist workers, employers and insurers. Questions about Interim Payment Directions and these guidelines should be directed to the Registrar of the Workers Compensation Commission (referred to in these guidelines as the Registrar) or the WorkCover NSW Information Centre on 13 10 50.

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INTERIM PAYMENT DIRECTIONS

1. Legislative Framework

These guidelines set out the procedures for referring and managing disputes dealt with by an Interim Payment Direction under Part 5 of Chapter 7 of the 1998 Act. These guidelines should be read in conjunction with the sections of the 1998 Act referred to in these guidelines, Clause 38 of the *Workers Compensation Regulation 2003*, Workers Compensation Commission Rules 2006, the Workers Compensation Commission Practice Directions, and approved forms and guides for completing the forms.

2. Intention of Interim Payment Directions

An Interim Payment Direction is intended to ensure that a worker is able to receive their correct entitlements, primarily where an insurer fails to commence payments or determine liability within the legislated timeframe, ie within 7 days after initial notification of an injury when provisional weekly benefits may be payable (and there is no reasonable excuse for non payment) or within 21 days of lodging a claim for weekly benefits or medical expenses.

Even where a dispute notice has been issued, some medical expenses disputes can best be resolved by expedited assessment, provided the cumulative amount is under \$7,500. This may also be the case in respect of a weekly payments dispute, eg where it is the first application to come before the Registrar and a question arises as to the validity or correctness of the dispute notice.

The Registrar will determine if it is appropriate for a matter to be dealt with by an expedited assessment and Interim Payment Direction. Where this is not appropriate, the Registrar will refer the matter to an arbitrator for final resolution of the dispute.

Where a matter is being dealt with as an interim payment direction application, and a dispute notice has not been issued, the insurer will review the claim and advise the outcome of the review to the Registrar and the worker. If a dispute notice has been issued as a result of the review and before a teleconference is conducted, it may then be appropriate, for the same reasons as set out above, for the dispute to be referred to an arbitrator for final resolution of the dispute.

Where a dispute notice has been issued in respect of a weekly payments dispute, the separate 'small claims' expedited assessment process is available for past weekly benefits for up to a maximum of 12 weeks of weekly benefits. This process will result in a Certificate of Determination being issued which will finalise the dispute.

Reference sections 298, 304A, 304B of the 1998 Act.

For further clarification of the application of the Interim Payment Direction process to particular applications refer to Part 8 of this guideline and to the Workers Compensation Commission Rules 2006.

Reference sections 292, 298 of the 1998 Act.

3. Interim Payment Directions

An Interim Payment Direction is a direction by the Registrar to pay:

- weekly payments of compensation for a period that does not exceed 12 weeks and can be for a period that is before the direction, but that period must not exceed 10 weeks
- medical expenses compensation for an amount up to \$7,500 (where the cumulative total of medical and related expenses under consideration in connection with the claim is likely to exceed \$7,500, the Registrar will refer the matter to an arbitrator for final resolution of the dispute).

Any payments authorised in an Interim Payment Direction must be in accordance with WorkCover gazetted fees orders.

Payments made by a respondent, pursuant to an Interim Payment Direction are made without an admission of liability.

Reference sections 297, 298 & 301 of the 1998 Act.

4. Types of Interim Payment Direction Applications

An application may be dealt with as an Interim Payment Direction application when any dispute concerns:

- weekly payments of compensation where:
 - provisional payments have not commenced within 7 days of initial notification of injury and there has been no reasonable excuse by the insurer for non payment
 - there has been a failure to determine liability within 21 days of a claim being made
 - a dispute notice has been issued and the matter is appropriate to be dealt with as an interim payment direction application (refer Clause 2)
- medical expenses compensation where:
 - there has been a failure to pay medical expenses within 21 days of a claim being made
 - a dispute notice has been issued and the matter is appropriate to be dealt with as an interim payment direction application (refer Clause 2).

Reference sections 267, 274, & 279 of the 1998 Act.

5. Requirement for Claiming Compensation

An application may be dealt with as an Interim Payment Direction application without a claim being made where:

- initial notification has been given to the insurer containing the minimum information required
- payment of weekly compensation has not commenced within 7 days without a reasonable excuse being issued by the insurer as specified in the *WorkCover Guidelines for Claiming Compensation Benefits*.

In all other cases a claim must be made in accordance with *WorkCover Guidelines for Claiming Compensation Benefits*.

Reference section 295 of the 1998 Act.

6. Interim Payment Direction for Weekly Payments Compensation

Presumption in favour of worker

The 1998 Act provides that the Registrar is to presume that an Interim Payment Direction for weekly payments of compensation is to be made unless any one or more of the following is the case:

- the worker has returned to work
- the worker did not report the injury to the employer as soon as possible after the injury happened
- the claim has minimal prospects of success
- there is not enough medical evidence available concerning the worker's period of incapacity
- a section 74 notice disputing liability has been served.

Where the presumption does not apply, the Registrar will determine how best to deal with the matter and may refer it to an arbitrator for final resolution of the dispute (refer Clause 2 above).

Reference section 297 of the 1998 Act.

Evidence based decision making

In deciding whether to make an Interim Payment Direction for weekly payments compensation the Registrar will consider:

- promotion of injury management and return to work
- available medical evidence that supports the claim and period of incapacity
- views of all parties.

Generally, an Interim Payment Direction should not be made when:

- a reasonable excuse for not commencing provisional payments has been notified to the worker by the insurer
- the provisional liability entitlements have been exhausted and the worker has not provided further evidence of their incapacity; or
- the worker has not provided information that the insurer has requested; or
- the worker has unreasonably failed to comply with an injury management plan and the insurer has notified the worker what the worker must do to comply with the injury management plan.

Reference section 297 of the 1998 Act.

7. Interim Payment Direction for Medical Expenses Compensation.

Presumption in favor of the worker

The Registrar is to presume an Interim Payment Direction for medical expenses is warranted where an injury management plan is in place or the insurer has accepted that the worker has received an injury, provided the Registrar is satisfied that the relevant treatment or service for medical expenses compensation is reasonably necessary:

- to prevent the worker's condition deteriorating; or
- to promote the worker's early return to work; or
- to relieve the worker's significant pain or discomfort.

Where the presumption does not apply, eg where a dispute notice has been served or where the cumulative total of medical and related expenses is likely to exceed \$7,500, the Registrar will determine how best to deal with the matter and may refer it to an arbitrator for final resolution of the dispute (refer Clause 2 above).

Evidence based decision-making

In deciding whether to make an Interim Payment Direction for medical expenses compensation the Registrar will consider:

- whether the treatment is reasonably necessary (for further information on 'reasonably necessary treatment' refer to *WorkCover Guidelines for Claiming Compensation Benefits*, Part 1, clause 10)
- the views of an approved medical specialist to whom the dispute is referred, if any
- WorkCover gazetted fees orders and treatment provider guidelines.

Reference section 297 of the 1998 Act.

8. Procedures at the Workers Compensation Commission (WCC)

Before the Registrar decides to make an Interim Payment Direction, the Registrar may:

- consider the information contained in the application and the reply
- consider the views of all parties
- request additional relevant information if necessary from the worker and/or insurer
- require documents be served and lodged
- schedule a teleconference within 14 days of referral of the dispute with the insurer, case manager and worker.

Following advice from the parties, if the Registrar is satisfied that sufficient information has been supplied in connection with an application for an Interim Payment Direction, the Registrar may determine the application without holding a teleconference.

Prescribed procedures for the production of documents under the Workers Compensation Commission Rules 2006 do not have application to Interim Payment Direction applications.

9. Imposing Conditions on Interim Payment Directions.

The Registrar may impose conditions on any interim payment order as the Registrar thinks fit. In doing so, the Registrar should consider the objectives of the WCC and the overall objectives of the workers compensation system.

The conditions may include a requirement that the worker submit medical certificates certifying the period of their incapacity.

Reference section 297 of the 1998 Act.

10. Notification to Parties

When the Registrar makes an Interim Payment Direction, a notice will be issued to the worker, employer and the insurer.

11. Compliance with an Interim Payment Direction

Unless otherwise directed within the notice:

- if the Interim Payment Direction is for weekly payments or for medical expenses the worker has already paid, the insurer must pay within 7 days of the notice being issued by the Registrar
- if the Interim Payment Direction is for other medical expenses compensation, the insurer must approve any treatment within 7 days of the notice being issued by the Registrar.

Reference section 297 of the 1998 Act.

12. Non-compliance with an Interim Payment Direction.

A person who fails to comply with an Interim Payment Direction is guilty of an offence and will be reported to WorkCover.

Reference section 300 of the 1998 Act.

13. Changing an Interim Payment Direction.

When the Registrar makes an Interim Payment Direction, payments must be made as directed except as follows:

- if new evidence that was not available when the Interim Payment Direction was made becomes available, a written application to revoke the Interim Payment Direction can be made as specified in Parts 14 below
- the Registrar will use these guidelines to review the application.

14. Revocation of an Interim Payment Direction

The Registrar, on the application of a party or on the Registrar's own motion, can revoke an Interim Payment Direction.

If the Registrar revokes an Interim Payment Direction, a notice will be provided to the parties and any obligation to make a payment under the direction ceases.

The revocation of an Interim Payment Direction does not affect the requirement to make payments directed to be paid before the revocation.

Reference section 299 of the 1998 Act.

15. The Effect of an Interim Payment Direction

Interim Payment Directions are not an admission of liability.

Reference section 301 of the 1998 Act.