



TASMANIA

WORKERS REHABILITATION AND COMPENSATION TRIBUNAL

PRACTICE DIRECTIONS 2020/2021

All previous Directions of the Tribunal are cancelled and replaced by the following consolidated list. All persons having conduct of or having responsibility for matters before the Tribunal are expected to comply with these Directions.

1. CONTACTING THE TRIBUNAL

Once a matter has been initiated in the Tribunal and correspondence generated by the Tribunal to commence the dispute resolution process, that correspondence will detail the Tribunal staff member who is the contact point for that matter. **All email correspondence and telephone calls must be directed to that person.** Failure to do this may result in the failure of the Tribunal to react in a timely manner. **PLEASE copy** all email correspondence to workers.compensation@justice.tas.gov.au which is checked daily as this will ensure in the absence of the named Tribunal staff member the information will still be received by the Tribunal. You will find contact details for all staff members on page 11 of these Practice Directions.

For general enquiries or where the specific contact person is not known, you should contact the Tribunal on (03) 6166 4750.

Except in unusual circumstances, copies of all correspondence to the Tribunal must be provided to the other party. Therefore, prior to acting on any correspondence, the Tribunal will need to be satisfied that the other party has received a copy of it.

2. SECTION 81A & SECTION 77AB REFERRAL LISTINGS

2.1 **Hearings**

When the Tribunal receives a s81A or s77AB referral (or both) they will be processed as a matter of priority (within 48 hours) and an explanatory letter, notice of hearing and a copy of the evidentiary material lodged with the referral will be forwarded to the worker.

If the Tribunal receives a s81A referral and a s77AB referral, they will be treated independently. If they are filed simultaneously, they will be listed and heard at the same time.

The Tribunal will endeavour to list s81A and s77AB referrals for hearing within 14 days from the date the Tribunal receives them.

Section 81A and s77AB referrals will, in the normal course, be listed to be heard by telephone (s81A(6)). However should a party or representative acting on behalf of a party believe, due to the issues involved in the referral or the need

to make detailed submissions, that the hearing ought to be listed for formal hearing in person or via Microsoft Teams, then they must contact the Tribunal as soon as possible to request a departure from the normal procedure.

Should it become apparent during a telephone hearing that there is a risk of adversely affecting the interests of any party or that it is otherwise not suitable to continue with such a hearing, the matter will be adjourned for formal hearing.

Parties and their representatives are to ensure the Tribunal is provided with all the telephone numbers for relevant persons who are to be contacted for the telephone hearing. This should occur well before the hearing date. If the Tribunal is not asked in advance of the hearing to contact a particular relevant person they will not be contacted.

The following must be filed and served on the other party at least 3 days prior to a s81A or s77AB hearing:

- Any evidence to be adduced by or on behalf of the worker.
- A list of authorities intended to be relied upon.
- Any notice of intention to call or cross-examine a witness.

The forms for both s81A and s77AB referrals can be accessed via the Tribunal’s website at www.workerscomp.tas.gov.au.

2.2 Section 81A Orders

Parties must be precise as to the form of orders required when a matter has resolved before hearing. Clear information needs to be given on the precise order required, or preferably provision of a draft of the actual order. Any requested order that is not in accordance with the Act or beyond the Tribunal’s jurisdiction will not be issued.

Ordinarily, the Tribunal will make orders in accordance with the following guide:

• Where liability for a claim made either within s80A or by application of s69(13) is accepted	Orders in accordance with s81A(3)(a) and (b)
• Where a reasonably arguable case is conceded upon a claim made either within s80A or by application of s69(13)	Orders in accordance with s81A(3)(c) and (d)
• Any circumstances not falling within the above criteria	Prepared draft order required from the parties

A s81A referral can be discontinued pursuant to regulation 5 of the *Workers Rehabilitation and Compensation Regulations 2011*; however the Tribunal

cannot make an order to that effect. If a party wishes to discontinue a referral pursuant to regulation 5, they must notify the Tribunal and all parties to the referral in writing (an email is sufficient).

2.3 Section 77AB Orders

Unless specific orders are necessary, the Tribunal will make orders in accordance with s77AC(3)(a) or (b).

2.4 Provision of supporting material with Referral

Employers and insurers are to ensure that in ALL s81A and s77AB referrals “...*all evidentiary material on which the employer intends to rely...*” accompanies the referral. Although there is no statutory requirement on an employer to serve a worker with the evidence on which it relies, a failure by the employer to do so could result in an adjournment being granted to a worker.

The reasons for dispute should be drafted in “plain English” and refer to the supporting documentary evidence in order that the worker and Tribunal are able to ascertain from the referral the basis, or bases, of dispute relied upon.

This requirement particularly applies to those referrals where an unrepresented worker purports to provide a signed acknowledgement that a reasonably arguable case exists. In such cases the Tribunal will not make the requested order unless the material provided enables the Tribunal to be satisfied that such a finding is justified. This is because s61(2) requires the Tribunal to be satisfied the worker properly understands the matters to which the consent relates.

2.5 Date of Order on Sections 81A and 77AB Referrals

Where a reasonably arguable case is determined after hearing, the order will be dated on the date of the verbal order or when the reserved decision is handed down (whichever is applicable).

Where a signed memorandum for consent to a reasonably arguable case is received, the order will be dated on the date the memorandum is received by the Tribunal. If another date is intended then the intended effective date of the order needs to be clearly expressed in the memorandum and be part of the consent by the parties. Parties should not hold onto a consent memorandum until shortly prior to a hearing.

2.6 Resolution/Adjournment of Sections 81A or 77AB Referrals Prior to Hearing

Please advise the Tribunal as soon as possible prior to the hearing date whether a referral has resolved, will be adjourned or is the subject of a consent order.

3. SECTION 71 REFERRALS

Please note s71 referrals should be made on the general referral form noting that s71 is the head of power the Tribunal is being requested to exercise.

Where possible the Tribunal will use Medical Panels to determine these matters.

4. **SECTION 132A (SETTLEMENT BY AGREEMENT) REFERRALS**

The Tribunal cannot advise what evidence may be required or necessary to support such an application. Each case will have different requirements. The evidence provided to the Tribunal is in confidence and will not be released to the other party.

It is expected that evidence be provided from the worker and legal adviser establishing the basis upon which it is asserted that an approval is appropriate. This usually will include legal advice on the issues including an assessment of the strengths and weaknesses of the worker's position.

Each of the applicable criteria set out in s132A(6) and all of the criteria set out in s132A(7) must be addressed.

It is expected that in the majority of applications, affidavits or statutory declarations from the lawyer and worker setting out the evidentiary basis of the application will be required.

In determining the appropriateness of a settlement, especially in regard to the worker's best interests, the quantum payable to the worker will be a consideration, therefore **“all in” settlements must come with a breakdown of costs and disbursements and other amounts to be deducted from the settlement sum, as well as the amount the worker will ultimately receive.**

5. **SECTION 138AB REFERRALS**

Where parties are not in agreement on whether the threshold has been met the Tribunal will refer matters for assessment by a Medical Panel where appropriate.

The Tribunal will maintain records of details and determinations in respect of these references.

6. **S143Q NOTIFICATIONS**

The statutory intent is that these disputes be resolved directly with the key players. When a notification is received, a conciliator will be appointed, and initial telephone contact with the parties will occur as soon as possible.

If the matter cannot be resolved by conciliation it will proceed to a hearing as a s42 referral and the Tribunal will make orders pursuant to s143Q(7).

7. **CONCILIATION PROCESS**

7.1 **Procedural Matters**

Whilst the conciliation process is flexible, the Tribunal will follow the procedures set out below unless it is not practicable to do so:

- An initial teleconference between the parties and/or their solicitors and the conciliator will initiate the conciliation process. The main aim of this teleconference is to identify the issues in dispute and to outline a time frame for both parties to complete the preparation of their evidence prior to the actual conciliation conference. This **may** include:
 - One or both parties providing a **statement of facts, issues and contentions**, outlining the key facts relied upon, the issues in dispute and the contentions a party believes should be drawn from the asserted facts.
 - Obtaining and providing **statements of witnesses** who may be called to give evidence.
 - Making medical appointments and obtaining **medical opinions and medical records**.
 - Making **discovery** by way of a list of documents in accordance with regulation 6.
- Parties issued with a notice to attend a teleconference should ensure the Tribunal is provided with the name and contact details of any solicitor or other person who will be representing them.
- If an adjournment is being sought, consent is to be obtained from the other party prior to contacting the Tribunal with a request. The Tribunal staff will not obtain this consent for the parties.
- Particular attention will be given to the early identification of a “medical question”, so as to remove the need for parties to obtain multiple medical opinions.
- Preliminary issues or legal points, once identified, will be referred separately for determination by the Tribunal, unless to do so would be inappropriate for reasons such as cost or delay.
- The conciliator will, insofar as is possible, ensure the conciliation process proceeds without any undue delays. Procedures that may be utilised for this purpose are:
 - telephone conferences between all parties and the conciliator;
 - use of the powers under s42I(2)(a) or (b); and/or
 - referral to the Tribunal for appropriate directions or orders.
- The actual conciliation conference will be listed after the conciliator has confirmed with the parties or their solicitors the time necessary for that particular conference, taking into account the nature and extent of issues and other factors that have been identified.

- When the conciliation process is concluded (without the matter being resolved) the conciliator will prepare the notice as required by s42G(4). The conciliator will, as part of this process:
 - confirm that no reasonable prospect exists for a conciliated outcome;
 - confirm that the question of whether there is an issue that could be resolved by a Medical Panel has been considered;
 - confirm that witnesses are identified and, if applicable, witness statements and proofs of evidence have been provided;
 - identify any amendments to the claim, referral or application that may be required;
 - confirm either that discovery has been completed or detail what discovery is proposed and if necessary give time limits for its completion;
 - confirm and document the issues that are still outstanding.
- Where a conference is unsuccessful in resolving the matter but the parties wish to continue settlement endeavours, the conciliator (if he or she believes a conciliated outcome may be possible) will, at the conclusion of the conference, provide a time and date for another conference.
- There may be circumstances where the conciliation process is concluded save that the parties wish to consider or need to attend to some matter before committing to arbitration. In this instance a further teleconference would then be held with the parties concerned, and after confirming any outstanding action has been completed, the conciliator will then confirm the matter is ready to proceed to a hearing.
- At the conciliator's discretion, a conference may be held prior to the completion of the exchange of medical opinions or witness statements, where the parties believe that such a conference may be beneficial in the resolution process. This is to be by exception only and will require the consent of all parties. If this fails to achieve an outcome then another conference can be set by which time all relevant evidence is to be exchanged.
- Attendance at a conference by telephone or Microsoft Teams is not appropriate except in exceptional circumstances. However, the Tribunal accepts that in some instances it is impractical for a party to appear in person and these requests will be considered on an individual basis by the conciliator.
- Once the conciliation process has concluded and the conciliator confirms that discovery has been completed and that there are no outstanding issues, the conciliator will advise the parties that the conciliation process

is at an end and that the matter will be listed for directions before a Commissioner so the matter can be set down for hearing.

- Prior to the directions hearing the Commissioner's Assistant will provide potential dates for the hearing and it is expected that at the directions hearing the parties will advise the suitability of those dates as well as the availability of counsel and all witnesses on those dates.

7.2 Disclosure of medical reports/proofs during conciliation process

Section 90D excludes (without exception) the use by any party of expert medical opinion that has not been disclosed as required by the Act. Note that s90B operates irrespective of there being a dispute or a referral before the Tribunal.

Notwithstanding s90A-90D, s42G still applies and ought to be read in conjunction with the above provisions.

When providing reports to another party a copy should be provided to the Tribunal at the same time. This will ensure that the conciliator is fully aware of the medical issues prior to a conciliation conference

7.3 Conciliation Conference

During the conciliation conference the conciliator will take an active role, setting out options and exploring whether an agreed outcome can be reached.

Any negotiated settlement of a claim for compensation arrived at during the conciliation process within two years of the date of the claim for compensation will at all times be subject to the approval of the Tribunal as provided by s132A.

7.4 Attendance at Conciliation Conferences

All parties served with notices should attend a conciliation conference. Leave not to attend may be granted in special circumstances, upon discussion with the conciliator concerned before the date of the conference. Section 42E(4) notes that failure to attend without reasonable excuse may result in a penalty.

7.5 Referrals Resolved at Conciliation

The parties must complete a resolved in conciliation form with respect to any referral which is settled at a conciliation conference or informally between the parties. If there is more than one referral between the parties which has been settled then those referrals can be included in the one form. This form must be completed even if a subsequent s132A referral is required. Any order sought in the form disposing of the referral will not be made until the s132A referral has been approved.

8. MISCELLANEOUS

8.1 Lists of Authorities

If at any hearing a party wishes to rely on any authorities then notice of the cases to be relied upon is to be provided to the other party and the Tribunal within 3 clear days prior the hearing.

8.2 Notices To Attend/Produce Documents

Parties should note that upon receipt of a request to issue notices as per s56(1)(b) the matter will be considered by a Commissioner. Parties will be required to fully detail their reasons for the request and satisfy the Commissioner of the existence of a proper basis for the issue of such a notice.

The Tribunal will not accept responsibility for any fees associated with the production of documents required in a Notice to Attend or a Notice to Produce Documents and the party seeking the documents must accept responsibility for such costs prior to such notice being issued.

Documents sought upon such a notice will be returnable to the Tribunal. Upon receipt, the Tribunal will arrange for the opposing party to examine the documents, if appropriate, in order to identify any issue as to privilege. Such issue will be determined by the Tribunal (either formally or informally) before the documents are made available for viewing by the other party.

In the normal course the Tribunal will not hear objections on the grounds of privilege, relevance or otherwise until the documents are before the Tribunal.

8.3 Discovery

The list of documents referred to in Regulation 6(1)(b) of the *Workers Rehabilitation and Compensation Regulations* 2011 is to be in the form attached to these Practice Directions. Both schedules must be fully completed but the list need not be verified by affidavit.

8.4 Referral to Arbitrated Hearing

Where a matter is referred for hearing to the Tribunal by the conciliator, and after the directions hearing where the parties have confirmed the dates for hearing provided by the Tribunal are suitable, the Tribunal will, within 7 days, provide to the parties a Notice of Prehearing Conference and a Notice of Hearing.

The purpose of the Prehearing Conference is to ensure that the matter is ready to proceed to hearing on the scheduled dates.

If there is an unsuccessful conciliation in relation to a s86(4) and s88 referral involving the same worker, the hearing of the s86(4) referral will not be delayed if the employer is not in a position to proceed with the s88 referral.

8.5 Applications for Interim Orders (s60A)

Applications for an interim order should be accompanied with the evidentiary material to be relied upon, in particular an affidavit or statutory declaration from the applicant setting out the evidence to be relied upon in establishing the basis for the making of an order. The application will not be listed until the Tribunal is satisfied that the supporting material and an outline of the basis of the application have been provided to the other party and to the Tribunal.

8.6 Requests for Orders By Consent

Parties seeking orders by consent are to provide a joint memorandum clearly outlining the form of the orders sought and the section of the Act pursuant to which orders can be made.

8.7 Expert Witnesses

Parties are to ensure that expert witnesses engaged for the purposes of matters before the Tribunal are aware of and agree to comply with the Expert Witness Code of Conduct published as Practice Direction 1 of 2016 at http://www.supremecourt.tas.gov.au/publications/practice_directions.

8.8 Microsoft Teams and Video Conference Facilities

At the new Tribunal Centre in Hobart, facilities are available for parties to attend the Tribunal via Microsoft Teams. These facilities can be made available if requested and approved by the Tribunal. Microsoft Teams is not available at the Launceston hearing room.

In relation to video conferencing facilities available in Launceston, booking and cancellation fees for third party supplied video conference facilities are the responsibility of the party who requested the booking of those facilities.

8.9 General Administration Issues

- (a) When filing paper referrals, the appropriate numbers of copies (including all attached documents) must be provided.
- (b) All referrals can now be filed with the Tribunal electronically by sending them to the following email address: workers.compensation@justice.tas.gov.au.
- (c) If a referral is lodged electronically the onus will be upon the party lodging the referral to prove the referral has been filed with the Tribunal within the time limit prescribed by the relevant section of the Act. When the Tribunal receives a referral it will acknowledge receipt of it. However, if a party does not receive an acknowledgement, they should contact the Tribunal to ensure the referral has been received.
- (d) All referrals filed electronically must be collated and attached in a single document. Covering letters may be attached separately.

- (e) The Tribunal will continue to provide workers with a hard copy of any referral filed on behalf of an employer
- (f) When noting the names and addresses of parties on referral forms it is not acceptable to leave details for parties blank or to note these as “care of” the insurer or other party unless there are exceptional circumstances such as an employer ceasing to trade or being in liquidation. A specific street address or other postal address must be provided as the Tribunal is required to send notices to all parties and the Act only makes provision for delivery by mail.
- (g) If a party, subsequent to a matter being referred to the Tribunal, wishes to receive further correspondence from the Tribunal by electronic means a written request can be made to the Tribunal staff. It will be considered and a written response will be provided.
- (h) When referrals are filed with the Tribunal, where possible, all evidentiary material relied upon should be attached (including the claim form and the initial workers compensation medical certificate). If a party does not have and cannot obtain a copy of the claim documents then the referral needs to be accompanied by a letter stating why that is so. The letter also needs to provide details of the injury, the date of the injury and the parties that are involved.
- (i) The Tribunal will make available to parties telephone and teleconference facilities as requested and approved.
- (j) All decisions of the Tribunal (except ex parte s81A decisions) are published on <https://www.austlii.edu.au/cgi-bin/viewdb/au/cases/tas/TASWRCT/>
- (k) Parties are asked to use the Tribunal’s forms (including the list of documents form) which can be accessed at www.workerscomp.tas.gov.au.

STAFF & TRIBUNAL DETAILS

The Tribunal is now located at the **Tribunal Centre, 38 Barrack Street, Hobart**

The Launceston office of the Tribunal is only occupied when the Tribunal is dealing with matters on that day. **The address of the Launceston office is Level 1, 111 St John Street, Launceston.**

NAME	CONTACT NUMBER/EMAIL
General Email	workers.compensation@justice.tas.gov.au
Reception	(03) 6166 4750
Learna Morley	(03) 6166 4750
Jemma Sacco	(03) 6166 4760
Ross Thomas (Registrar)	(03) 6166 4752 ross.thomas@justice.tas.gov.au
Andrew Cooper (Deputy Registrar)	(03) 6166 4758 andrew.cooper@justice.tas.gov.au
Susan Kerr - Assistant to Commissioner Wilkins	(03) 6166 4759 susan.kerr@justice.tas.gov.au
Eve Marriott - Assistant to Chief Commissioner Clues	(03) 6166 4754 eve.marriott@justice.tas.gov.au
Tribunal Fax	(03) 6173 0203
Launceston Phone	(03) 6777 2980

A M CLUES
CHIEF COMMISSIONER

WORKERS REHABILITATION & COMPENSATION TRIBUNAL

Workers Rehabilitation and Compensation Regulations 2011

Regulation 6(1)(b)

To the Registrar, Workers Rehabilitation and Compensation Tribunal:

Employer		Phone No:
Employer's Address		
Worker		Phone No:
Worker's Address		
Insurer (if applicable)		
Insurer's Address (if applicable)		
Date of Injury		

LIST OF DOCUMENTS

The following is a list of the documents relating to the matters in question in this matter which are or have been in the possession, custody or power of the above named worker [*or employer as the case may be*] and which is served in compliance with the *Workers Rehabilitation and Compensation Regulations 2011* (r6(1)(b)).

1. The party making this list has in his [*or her or its*] possession, custody or power the documents relating to the matters in question in this matter set out in the first schedule.
2. The party making this list objects to produce the documents set out in Part II of the first schedule on the ground that [*state the ground of objection*].
3. The party making this list has had, but has not now, in his [*or her or its*] possession, custody or power the documents relating to the matters in question in this matter set out in the second schedule.
4. The documents in the second schedule -
 - (a) were last in the possession, custody or power of the party making this list on the dates following; and
 - (b) have been dealt with in the manner following; and
 - (c) now are in the possession of the persons stated below –

[*state as to each of the said documents when it was last in the possession, custody or power of the party making the list, what has become of it and in whose possession it now is*]

5. Neither the party making this list nor his [*or her or its*] practitioner nor any other person on his [*or her or its*] behalf has now, or ever had, in his [*or her or its*] possession, custody or power any documents of any description whatever relating to any matter in question in this matter, other than the documents set out in the first and schedule.

THE FIRST SCHEDULE

PART I

[Set out in a convenient order the documents (or bundles of documents if of the same nature, such as invoices) in the possession, custody or power of the party that the party does not object to produce, with a short description of each document or bundle sufficient to identify it]

PART II

[Set out in a convenient order the documents in the possession, custody or power of the party that the party objects to produce]

THE SECOND SCHEDULE

[Set out in a convenient order the documents (or bundles of documents if of the same nature, such as invoices) that have been, but as at the date of service of the list are not, in the possession, custody or power of the party]

Dated:

[Party making list or the practitioner for that party]

NOTICE TO INSPECT

Take notes that the documents listed in Part I of the First Schedule may be inspected at [*address of place where documents may be inspected*] on [*specify date*] between the hours of [*specify hours*].

Dated:

[Party making list or the practitioner for that party]

To: [*Specify party on whom the list is served or the practitioner for that party*]