



TASMANIA

WORKERS REHABILITATION AND COMPENSATION TRIBUNAL

PRACTICE DIRECTIONS 2018/2019

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 in a timely manner by the Tribunal. You will find contact details for all staff members on the last page of these Practice Directions.

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

Contacting the Assistant to a particular Commissioner or Registrar while they are travelling intrastate is via mobile telephone. You will find these contact details on the last page.

The Tribunal has noticed an increasing tendency for parties to write to the Tribunal without copying the other party in. While this practice might be appropriate if a party is contacting a conciliator prior to or after a conciliation, it is not generally so. The Tribunal will therefore require evidence that the other party has been copied in before acting on the correspondence.

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.

Where a s81A referral and a s77AB referral are referred simultaneously or within a short time of each other they will, where possible, be listed and heard together. Confirmation of receipt of the referral and a notice of hearing will be forwarded to the parties.

Although it is accepted that in some cases (dependent upon time limits) a reasonably arguable case finding and consequential orders on the s81A referral may encompass the disputed medical accounts in the s77AB referral, the Tribunal will require both referrals to be treated independently and orders made with respect to both. In those cases the appropriate order on the s77AB would be to relieve the employer of the obligation to make the payments or to order the discontinuance of the referral.

The Tribunal will attempt to ensure that s81A and s77AB referrals are listed for hearing 14 days from the date the Tribunal receives the referral.

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 that due to the issues involved in the referral or the intention to make detailed submissions then they must contact the Tribunal to request the matter be listed for formal hearing. Should it become apparent during the telephone hearing that there is a risk of adversely affecting the interest of one or more of the parties or that it is otherwise not suitable to continue with such a hearing, the matter will be adjourned for formal hearing.

Any evidence to be adduced by or on behalf of the worker must be provided to the Tribunal no later than 3 days prior to the date of hearing; the Tribunal will forward this to the other party or their representative.

Parties and their representatives are to ensure the Tribunal is provided with the telephone number that they are to be contacted on for the telephone hearing. It is a matter for a party if represented to make arrangements to be at a single location for a hearing if that is their wish.

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

If a s81A or s77AB are to be heard by formal hearing rather than via telephone, the parties can choose to appear by videoconference. Arrangements for this are to be made directly with the Tribunal staff member listed on the notice of hearing. **All documentary evidence to be relied upon by that party is to be provided to the Tribunal no later than 3 days prior to hearing.** The Tribunal will provide such documents to the other party and their representative. Notice of the intention to call witnesses is to be given to the Tribunal in order that any appropriate arrangements can be made.

If a party wishes to rely on any authorities then notice must be provided to the Tribunal and the other party no later than 3 days prior to the hearing. This can be done either in the referral itself or in the letter to the worker which is required by s81A(1)(a) and (b). Alternatively a list of authorities can be provided to the Tribunal and the other party. If a party fails to comply with this requirement then that may result in the need for an adjournment so that the other party and the Tribunal can consider the authorities.

2.2 Section 81A Orders

Parties must be precise as to the form of orders required when a matter has resolved before hearing. There is ongoing confusion as to the form and nature of orders that can be made on a s81A referral. The Tribunal still receives advice a referral has “settled” or “is to be withdrawn” together with a request for “an appropriate order”. This is unsatisfactory, as it requires either a “guess” by our staff or unnecessary follow up to ascertain the party’s actual intention.

Clear direction 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:

<ul style="list-style-type: none">• 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)
<ul style="list-style-type: none">• 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)
<ul style="list-style-type: none">• Where a referral is to be discontinued or withdrawn	Order that referral is discontinued (Reg 5)
<ul style="list-style-type: none">• Any circumstances not falling within the above criteria	Prepared draft order required from the parties

2.3 Section 77AB Orders

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

Where a referral is to be discontinued or withdrawn an order will be made that the referral is discontinued as per Regulation 5.

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, it may be prudent to do so, especially when a worker is often asked, at the time of service of the notice of dispute, to consent to a reasonably arguable case finding and consequential orders. Adjournments have been granted to workers when they have not had sufficient time after receipt of the employer’s evidentiary material from the Tribunal to seek legal advice.

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 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 illustrates a basis for it to be satisfied that such a finding is justified. Section 61(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 written determination 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 as this results in the waste of Tribunal resources. It should be forwarded to the Tribunal soon after the parties consent to the outcome and if necessary the consent can indicate that the order is not to be made until the date the referral is listed for hearing.

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

There are instances where the Tribunal is provided with advice as late as the day of a listed hearing that a reference has resolved, will be adjourned or is the subject of a consent order. In some instances the Tribunal is given no advice at all and has to follow up with parties where there is simply no appearance.

Timely advice of any of the above must be provided in order that listings may be more effectively managed.

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.

A list of accredited specialists for the assessment of whole person impairment can be obtained on the WorkCover website at www.workcover.tas.gov.au.

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 evidence is 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. If it is asserted that a settlement is in the best interests of the worker, full details of the reasons why must be articulated. If it is asserted that rehabilitation efforts have been exhausted then full details of those endeavours including applicable medical reports and rehabilitation provider's reports would be required. If it is submitted that there are special circumstances why rehabilitation is not appropriate, full details as to what it is asserted are those "special" circumstances are to be provided.

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.

If an application is based upon a "return to work" the Tribunal considers in the normal course this requires evidence of return to meaningful work which provides a circumstance where the worker does not have an ongoing entitlement to weekly payments. There may be exceptions to this that would be considered on their own particular circumstances i.e. a clearance for return to pre-injury duties, but a decision by a worker for bona fide unrelated reasons not to return to full time work.

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 identification of what is the resultant payment to the worker.

Parties who wish to resolve the matter must proceed with a separate referral addressing the matters in s132A(6) and (7).

Separate forms are required for s132A(4) and (9)

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. S143P NOTIFICATIONS

The statutory intent is that these disputes be resolved at the lowest level and directly with the key players.

The Chief Commissioner will act upon a notification and appoint a mediator. Initial telephone contact with the parties will occur as soon as possible after notification of the dispute.

Any meetings will take place at the most convenient site.

The notification of dispute form is available on the Tribunal's website: www.workerscomp.tas.gov.au.

7. CONCILIATION PROCESS

TO BE READ IN CONJUNCTION WITH DIVISION 2 OF PART V OF THE ACT

7.1 Procedural Matters

The Tribunal will continue to follow the procedures set out below with respect to the conciliation process:

- 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.
- Parties issued with a notice to attend a teleconference should ensure the Tribunal is notified if another representative is attending to the matter in their stead.
- 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 identified in the conciliation process to that stage.
- 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 confirm with the parties as part of this process that:
 - No reasonable prospect exists for a conciliated outcome;
 - The question of whether there is an issue that could be resolved by a Medical Panel has been considered;
 - Witnesses are identified and, if applicable, witness statements and proofs of evidence have been provided;
 - The conciliators will advise the parties of two alternative hearing dates for the matter. At the expiration of 7 days from the conclusion of the conciliation process, the parties will advise whether their witnesses are available on the dates provided by the conciliator;
 - Any undertakings given by either party have been completed or identification of those undertakings which need to be given and when they are to be completed;
 - Confirm and document the issues that are still outstanding;
 - 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 the matter is ready for arbitration;
 - Give specific advice to the parties that the conciliation process has concluded; this notice provides formal advice that the conciliation process is at an end;
 - If any party believes directions are required prior to a matter being listed for an arbitrated hearing then if those directions cannot be made by the conciliator the matter will be listed before the Tribunal. That directions hearing will be listed at the expiration of 7 days from the conclusion of the conciliation conference.
- 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 conference (perhaps by telephone) would then be held with the parties concerned and after confirming any outstanding action has been completed the matter will be referred to 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 concurrence 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 videolink 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.

7.2 Preliminary Stage

The primary requirement during this stage is to identify the legal and factual issues in the referral. When necessary the conciliator may request one or both parties to prepare a **Statement of Issues** to clarify what issues are in dispute.

The conciliator will discuss with parties what enquiries and investigations they may undertake and what supporting material they are seeking. Discussion will include details of:

- Obtaining witness statements from the applicant and other persons.
- Making of medical appointments and the obtaining of medical opinions or medical records.

The conciliator may set a timetable for the taking of the identified required steps by the parties. The conciliator may issue a directive specifying what must be done by either or both parties and by when. A direction may require one or both of the parties to give relevant documents to the Tribunal and the other party.

Where a referral may fall to be determined upon findings of disputed facts, the conciliator may require the parties to provide details of the nature and extent of the evidence to be adduced or witness statements from those persons who may be called to give evidence.

7.3 Before Conciliation Conference

Unless the conciliator agrees, a conciliation conference will not occur until the parties confirm that medical opinion relied upon by each party and other relevant documentary evidence including (if directed) witness statements or an outline of factual assertions have been provided to the Tribunal and to the other

party. Parties are expected to disclose the factual basis of their position and to be prepared to engage in frank and open discussion of the respective factual assertions.

Where the conciliator considers that it would assist in the conciliation process, the parties may be required to prepare **a Statement of Facts, Issues and Contentions.** In the usual course this would be initiated by the applicant with the respondent to provide a statement in reply.

The Statement of Facts, Issues and Contentions is to set out;

- The key facts relied upon.
- The issues identified as still in dispute.
- The contentions that the party believes should be drawn from the asserted facts.

The applicant may be requested to complete and return to the conciliator a checklist which sets out the detail of compensation entitlements or other relief sought by the reference.

7.4 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.

It is apparent that whilst the parties are providing medical reports and other documents relevant to the issues to each other the documents are not being provided to the Tribunal and this makes it difficult for the conciliator to ensure that he/she is fully aware of the issues prior to a conciliation conference. **When providing reports to another party a copy should be provided to the Tribunal at the same time if it is to be relied upon.**

7.5 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. If, after such time as the conciliator considers reasonable, the parties are unable to resolve the issues of the referral which are the subject of the conciliation, the parties will be permitted to discuss a settlement of all the worker's outstanding entitlements and whether such settlement could satisfy s132A of the Act.

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

Conciliation conferences will be conducted by the Registrar, Deputy Registrar, Chief Commissioner or Commissioner. Allocation of matters during conciliation to a Commissioner will be by exception due to the potential for future conflicts should matters not resolve and require a hearing.

7.6 Attendance at Conciliation Conferences

Insurers are reminded that they have no authority to release an employer from its obligation to attend a conciliation conference. Leave may be granted in specific 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.

Where a party has been served with a notice and fails to attend the Tribunal will give consideration to referring that breach for consideration of prosecution.

7.7 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, other than a s81A or s77AB 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 days of 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 and 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 provided for in FORM 26 of the *Supreme Court Forms Rules* 2000 with necessary modifications. A copy of the Form is available from the website: www.workerscomp.tas.gov.au. This 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 parties have confirmed the dates for hearing provided by the Tribunal are suitable, the Tribunal will, within 7 days of the confirmation of the hearing dates, provide to the parties a Notice of Prehearing Conference and a Notice of Hearing. The Tribunal will aim to have the Prehearing Conference occur within 14 days of the date the Notice is sent out.

At the Prehearing Conference the parties are required to confirm the availability of all their witnesses for hearing. If witnesses are not available for either of the dates nominated by the conciliator at the conclusion of the conciliation process, all communications between parties, witnesses, and the Tribunal regarding alternative dates must be finalised before the Prehearing Conference.

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 outlining the form of the order sought. Where the draft orders relate to the finalisation of a referral those orders must conform with the Tribunal's power under the Act and clearly identify the nature of the claim for compensation that is resolved.

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 Video conference facilities

- (a) Use of the Tribunal video conference facility incurs a fee of \$100.00 per hour or part thereof (to the nearest 15 mins).
- (b) Hire use for a third party supplied video conference facility and any associated line costs will be the responsibility of the party requesting use of the facility.
- (c) Line costs (if incurred) for the use of the Tribunal video conference equipment will be extra and the responsibility of the party requesting the use of the facility.
- (d) Cancellation fees for third party supplied video conference facilities are the responsibility of the party who requested the booking of those facilities.
- (e) The Tribunal will charge a cancellation fee of 50% of the booked link time for any video link cancelled within 48 hours (2 working days) and 100% of the booked link time cancelled within 24 hours (1 working day) of the booked time for that link

8.9 General Administration Issues

- (a) When filing referrals ensure that the appropriate numbers of copies are included. This means copies of all documents not just the referral form.
- (b) 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. If a party, subsequent to a matter being referred to the Tribunal, wishes to receive further correspondence from the Tribunal by electronic means specific arrangements can be made with Tribunal staff.
- (c) It is noted that some parties are making references to the Tribunal with no evidence attached. Documents supporting the referral such as the claim form, the initial workers compensation medical certificate, any subsequent certificates and the medical evidence on which a party relies are to be filed with the referral. The Tribunal will seek these prior to processing the referral. 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 date of the injury and its nature.
- (d) The Tribunal will make available to parties telephone and teleconference facilities as requested and approved. In the normal course the Tribunal will bear the cost of same however where due to the length of time required, the location of where the call is made or the nature of the

equipment used (i.e. mobile phones) the cost is in excess of normal the party requesting use of the facility will bear the cost. Such likelihood will be confirmed with the party concerned beforehand.

- (e) Parties are asked to use the Tribunal's forms which can be accessed at www.workerscomp.tas.gov.au.

STAFF DETAILS

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
Reception (Jemma Sacco) Ross Thomas (Registrar) Andrew Cooper (Deputy Registrar)	(03) 6166 4750 jemma.sacco@justice.tas.gov.au andrew.cooper@justice.tas.gov.au ross.thomas@justice.tas.gov.au
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