**GENERAL DIVISION**

**PERSONAL COMPENSATION STREAM**

**PRACTICE DIRECTION 2**

This Practice Direction is made pursuant to s93 of the *Tasmanian Civil and Administrative Tribunal Act 2020.*

2.1 Any proposed agreement to settle a worker’s claim for compensation within 2 years of the claim being first made must be approved by the Tribunal pursuant to s132A(5). The Tribunal may approve, or refuse to approve, a proposed agreement to settle that is referred to it.

Section 132A(6) states:

*(6) The Tribunal may only approve under subsection (5) a proposed agreement to settle -*

1. *if the Tribunal is satisfied that –*
2. *all reasonable steps have been taken to enable the worker to whom the proposed agreement relates to be rehabilitated or retrained or to return to work; or*
3. *the worker has returned to work; or*
4. *where the Tribunal has, on a reference to the Tribunal under* [*section 81A*](https://www.legislation.tas.gov.au/view/html/inforce/2022-12-12/act-1988-004?query=((PrintType%3D%22act.reprint%22+AND+Amending%3C%3E%22pure%22+AND+PitValid%3D%40pointInTime(20221212000000))+OR+(PrintType%3D%22act.reprint%22+AND+Amending%3D%22pure%22+AND+PitValid%3D%40pointInTime(20221212000000))+OR+(PrintType%3D%22reprint%22+AND+Amending%3C%3E%22pure%22+AND+PitValid%3D%40pointInTime(20221212000000))+OR+(PrintType%3D%22reprint%22+AND+Amending%3D%22pure%22+AND+PitValid%3D%40pointInTime(20221212000000)))+AND+Title%3D(%22Workers%22+AND+%22Rehabilitation%22+AND+%22and%22+AND+%22Compensation%22+AND+%22Act%22+AND+%221988%22)&dQuery=Document+Types%3D%22%3Cspan+class%3D%27dq-highlight%27%3EActs%3C%2Fspan%3E%2C+%3Cspan+class%3D%27dq-highlight%27%3EAmending+Acts%3C%2Fspan%3E%2C+%3Cspan+class%3D%27dq-highlight%27%3ESRs%3C%2Fspan%3E%2C+%3Cspan+class%3D%27dq-highlight%27%3EAmending+SRs%3C%2Fspan%3E%22%2C+Search+In%3D%22%3Cspan+class%3D%27dq-highlight%27%3ETitle%3C%2Fspan%3E%22%2C+All+Words%3D%22%3Cspan+class%3D%27dq-highlight%27%3EWorkers+Rehabilitation+and+Compensation+Act+1988%3C%2Fspan%3E%22%2C+Point+In+Time%3D%22%3Cspan+class%3D%27dq-highlight%27%3E12%2F12%2F2022%3C%2Fspan%3E%22#GS81A@EN)*, determined that there is a reasonably arguable case for disputing liability to pay compensation under this Act, if the Tribunal is satisfied that the proposed agreement is in the best interests of the worker; or*
5. *if the Tribunal is satisfied that –*
6. *special circumstances in relation to the worker make the worker's rehabilitation, retraining or return to work impracticable; and*
7. *the proposed agreement is in the best interests of the worker.*

2.2 The following documents/information **must** be included with all referrals to the Tribunal pursuant to s132A(4):

* the claim form;
* the initial workers compensation medical certificate;
* the deed of release or any other document comprising the agreement to settle;
* a signed statement or affidavit by the worker’s legal practitioner or an affidavit by the worker including the following information:
  + the date of injury;
  + the date on which the claim was first made;
  + the nature or description of injury;
  + if there have been multiple claims the dates of injury and the dates of claim for each claim made;
  + if no relevant letter of advice was provided to the worker prior to the settlement being agreed, details of any oral advice given (including the date(s) of the advice) as to the following:
    - the merits of the worker’s case;
    - quantum;
    - the consequences of settlement; and
    - any recommendation in respect to making or accepting the relevant final offer.
  + the terms of the settlement agreed to;
  + confirmation that the employer will pay the workers costs of the s132A referral in accordance with s132A(13);
  + which subparagraph of s132A(6) applies to the settlement;
  + whether the worker has returned to any work, part-time or otherwise, with the employer, or another employer and whether they are required to resign from their employment as a condition of the settlement;
  + if the claim ultimately settles outside of the recommended settlement range covered in any pre-settlement advice, an explanation as to why that occurred (e.g. risks to be considered, changes in circumstances, new medical evidence); and
  + a breakdown of all costs, disbursements and other amounts to be deducted from the settlement sum, as well as the nett amount the worker will ultimately receive.
* The statement or affidavit should annex:
  + Any letter of advice prior to the settlement being agreed (pre-settlement advice) in respect to:
    - the merits of the worker’s case;
    - quantum;
    - the consequences of settlement; and
    - any recommendation in respect to making or accepting the relevant final offer.
  + If not otherwise covered in a pre-settlement advice, a letter of advice to the worker advising as to:
    - any tax liability resulting from the settlement;
    - the extinguishment of all rights and entitlements to all workers compensation and damages, whether by way of release or order;
    - any liability to repay Medicare, whether by the 10 per cent advance payment arrangement or otherwise;
    - any Centrelink preclusion period that will apply to the worker including any obligation to repay and any period into the future when the worker might not be entitled to Centrelink benefits;
    - the obligation of the worker to meet any relevant My Care or National Disability Insurance Scheme (NDIS) repayments and preclusion periods which may apply to such entitlements in the future; and
    - advice in relation to the worker’s entitlement, if any, to a lump sum payment pursuant to s71 of the Act.
* Where a statement or affidavit is provided by the worker’s legal practitioner a signed statement or affidavit by the worker confirming that:
  + the worker has received the letter of advice and that they understand it; and
  + the worker wishes to settle their claim for the amount agreed.

Richard Grueber

Acting President – TASCAT

7 December 2023