**INFORMATION SHEET:**

**Disputed Claim - Section 81A Process**

Your employer has decided to dispute your workers compensation claim.

**What does this mean?**

When you made your claim your employer was required by law to start paying weekly payments (wages) as well as medical and associated costs referred to as “workers compensation” immediately. Your employer then had 84 days to decide whether to accept your claim or dispute it.

As your employer has decided to dispute your claim, it is required within the 84 days to:

* Serve on you a written notice that it disputes liability to pay workers compensation benefits stating the reasons for doing so;
* Send the Tribunal a referral requesting a hearing to confirm the employer may dispute your claim;
* Provide the Tribunal with all evidence upon which it intends to rely at that hearing.

**Notice of the hearing date**

The notice of the hearing date and time is enclosed together with a copy of all relevant documents received by the Tribunal from your employer.

The hearing will be held by phone at the time stated on the notice of hearing. You will be contacted on the phone number contained in your claim form unless you call the Tribunal to advise you wish to be called on a different number. You may be represented at the hearing if you wish.

You will need to be available at the appointed time and be prepared to wait for a while to be called. Sometimes there is a delay due to an earlier hearing running over time.

If you cannot be contacted at or after the time appointed for the hearing, the Tribunal may proceed without you.

**IMPORTANT: This hearing is not a final hearing and the Tribunal only needs to be satisfied there is a reasonably arguable case. This means that if the Tribunal finds there is a reasonably arguable case you are not prevented from pursuing your claim further.**

**What is a “*reasonably arguable case*”?**

A “*reasonably arguable case*” is a legal test. To determine whether your employer has a “*reasonably arguable case*”the Tribunal:

* Checks that the employer has made the referral properly, in time and with the required notice to you. You will need to let the Tribunal know if you dispute this.
* Focuses on the material provided by your employer about why your claim is disputed.
* Examines your employer’s case *assuming* the facts most favourable to your employer will ultimately be accepted. This assumption only applies for the purpose of *this hearing*. If you dispute the history or events of your injury as presented by your employer the Tribunal *usually* will not determine whose version is correct at this hearing. You can dispute your employer’s version at a later hearing if you need to.
* Considers *the assumed history and facts* and decides whether that *could* result in your claim being rejected at a final hearing.

You might need legal advice to understand how this process would apply to your case.

**What happens at the hearing of your employer’s referral?**

At the hearing, the Tribunal will determine whether your employer has a “*reasonably arguable case*” that it should not have to pay workers compensation benefits to you.

If the Tribunal decides that the employer *does have* a reasonably arguable case for disputing your claim, it will make an order stopping your workers compensation payments.

* **The effect of the order is to suspend your entitlement to workers compensation payments. They will remain suspended if you decide not to take further action.**
* **You will not have to repay any workers compensation benefits received before the Tribunal confirms that your employer may dispute your claim (except in very limited circumstances).**

If the Tribunal decides that the employer *does not* *have* a reasonably arguable case for disputing your claim, it will make an order that your workers compensation payments continue.

**What happens next?**

If the Tribunal decides that your employer has a “*reasonably arguable case*”, you can still take your claim for compensation further by asking the Tribunal to make a determination after a further hearing where all the evidence about your claim will be considered.

To take your claim further you have to file your own referral with the Tribunal. The Tribunal can provide the referral form and give you information about the process.

**You can consent**

If, you accept that your employer has a “*reasonably arguable case*” to dispute your claim, you can consent without having to attend the hearing. A consent form can be provided by your employer’s representative or you can ask the Tribunal to provide one. By signing a consent, you are not *agreeing* with your employer’s case, you are only agreeing that at this stage the Tribunal will find a reasonably arguable case. If you sign a consent, that does not stop you from pursing your claim by filing your own referral.

**Further information**

If you have any questions you can contact Worker Assist on 6216 7677 or a lawyer. The Tribunal is unable to provide any legal advice.