

**ORDERS IN COUNCIL****Accident Compensation Act 1985  
WORKCOVER LEGAL COSTS ORDER 2006**

The Governor in Council, under section 134AG of the **Accident Compensation Act 1985**, makes the following Order:

Dated 10 October 2006

Responsible Minister  
JOHN LENDERS MP  
Minister for WorkCover

RUTH LEACH  
Clerk of the Executive Council

1. **Citation**  
This Order may be cited as the WorkCover Legal Costs Order 2006.
2. **Application**  
This Order specifies the legal costs that may be recovered on a party and party basis by a legal practitioner acting on behalf of a worker in respect of any claim, application or proceedings under section 134AB of the **Accident Compensation Act 1985**. This Order applies to all applications brought or made on or after the date of commencement of the Order pursuant to section 134AG(2). For those applications made prior to the commencement of this Order the Workcover Legal Costs Order 2001 will continue to apply.
3. **Definitions**
  - "Act" means the **Accident Compensation Act 1985**;
  - "advice" means the advice of the Authority or self-insurer referred to in sections 134AB(7) and (8) of the Act;
  - "application" mean an application in the form referred to in section 134AB(5)(a) of the Act;
  - "attendances" mean services provided by a legal practitioner including all work referred to in the Scales of Costs contained in the County Court Rules and in the Supreme Court Rules;
  - "Authority" means the Victorian WorkCover Authority established under section 18 of the Act;
  - "certificate" means a certificate in writing as set out in Section 134AB(16)(a)(ii) of the Act.
  - "claim" means the proposed claim at common law, in respect of each cause of action which the worker seeks to maintain;
  - "consent and authority" means the form of consent and authority comprising Form D to the Ministerial Directions made pursuant to S134AF(1) of the Act;
  - "County Court Rules" means the County Court Rules of Procedure in Civil Proceedings 1999 made under the **County Court Act 1958**;
  - "health service" means:
    - (a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or organisation performing it --
      - (i) to assess, maintain or improve the individual's health; or
      - (ii) to diagnose the individual's illness, injury or disability; or
      - (iii) to treat the individual's illness, injury or disability or suspected illness, injury or disability; or
    - (b) a disability service, palliative care service or aged care service; or

- (c) the dispensing on prescription of a drug or medicinal preparation by a pharmacist;  
 "legal practitioner" has the same meaning as the term "Australian lawyer" in the **Legal Profession Act 2004**;
- "medical report" means a medical report as defined in section 134AB(37) of the Act;
- "offer" means an offer in settlement or compromise of a claim and includes an offer of a nil amount;
- "Scales of Costs" means the Scale of Costs contained in Appendix A to the County Court Rules or the Scale of Costs contained in Appendix A and B of Chapter I to the Supreme Court Rules.
- "section 134AB(12) conference" means a meeting, discussion or series of meetings or discussions commenced in accordance with section 134AB(12) of the Act;
- "self-insurer" means a body corporate or partnership approved as a self-insurer under Part V of the Act;
- "statutory offer" and "statutory counter offer" mean the offers referred to in section 134AB(12) of the Act;
- "Supreme Court Rules" means the Supreme Court (General Civil Procedure) Rules 2005 made under the **Supreme Court Act 1986**;
- "treaters notes and records" means any notes, records, correspondence and/or medical reports held by or of any medical practitioner, hospital or any other person concerning any medical treatment by or any other health service provided to the worker.

#### 4. Legal Costs

- A. Where a worker, who has provided a signed and witnessed consent and authority, settles or compromises a claim and recovers damages after making an application and after a section 134AB(12) conference has commenced, and prior to commencing proceedings in accordance with section 134AB(12) of the Act, the worker's legal practitioner is entitled to recover on a party and party basis the costs of the application and the section 134AB(12) conference as follows:-
- (1) legal practitioner's professional costs, \$15,000 (inclusive of Counsel's fees); or
  - (2) if the worker obtains a serious injury certificate after the commencement of an Originating Motion \$13,500 (inclusive of Counsel's fees); or
  - (3) if the worker obtains a serious injury certificate for pain and suffering only after the commencement of an Originating Motion \$11,475 (inclusive of Counsel's fees)
  - (4) for non-medical expert reports, the worker's legal practitioner is entitled to recover as a disbursement reasonable fees for relevant and necessary reports;
  - (5) in addition to the costs and fees referred to in paragraphs (1) to (4) and Part C, the worker's legal practitioner is entitled to recover reasonable interpreters' fees and travel allowances payable in accordance with the Scale of Costs contained in the County Court Rules.
- B. Where a worker, who has not provided a signed and witnessed consent and authority, settles or compromises a claim and recovers damages after making an application and after a section 134AB(12) conference has commenced, and prior to commencing proceedings in accordance with section 134AB(12) of the Act, the worker's legal practitioner is entitled to recover on a party and party basis the costs of the application and the section 134AB(12) conference as follows:-
- (1) legal practitioner's professional costs, \$12,000 (inclusive of Counsel's fees); or
  - (2) If the worker obtains a serious injury certificate after the commencement of an Originating Motion \$9,600 (inclusive of Counsel's fees); or

- (3) if the worker obtains a serious injury certificate for pain and suffering only after the commencement of an Originating Motion \$8,034 (inclusive of Counsel's fees);
  - (4) for non-medical expert reports, the worker's legal practitioner is entitled to recover as a disbursement reasonable fees for relevant and necessary reports;
  - (5) in addition to the costs and fees referred to in paragraphs (1) to (4) and Part C, the worker's legal practitioner is entitled to recover reasonable interpreters' fees and travel allowances payable in accordance with the Scale of Costs contained in the County Court Rules.
- C. In addition to the items referred to at Parts A and B above (respectively), in respect to medical reports and treaters' notes and records relied upon and exchanged on behalf of the worker, the worker's legal practitioner is entitled to recover as a disbursement the reasonable cost of:
- (a) All treaters' notes and records (excluding medico legal reports). Payment for treaters' notes and records shall be made within a reasonable time of a written request to the legal representative of the Authority or self insurer by the worker or the worker's legal practitioner at any time after the application is served on the Authority or self insurer and is not dependent on the worker obtaining payment of any damages.
  - (b) One medico legal report per specialty relevant to the injury or injuries alleged to be and accepted as or determined to be serious. The Authority or self-insurer may allow the cost of more than one medico legal report per speciality. Payment for medico legal reports shall only be made where a worker settles or compromises a claim and recovers damages after making an application and after a section 134AB(12) conference has commenced, and prior to commencing proceedings in accordance with section 134AB(12) of the Act.
- D. Where a worker settles or compromises a claim and recovers damages, or obtains judgment and is awarded damages after instituting proceedings under section 134AB(12) of the Act ("the proceeding") and if section 134AB(28)(b) of the Act applies, the worker's legal practitioner is entitled to costs on a party and party basis as follows:--
- (1) legal practitioner's professional costs and disbursements of the application and section 134AB(12) conference in accordance with:
    - (a) if the worker has provided a signed and witnessed consent and authority, the entitlements set out in Part A and Part C; or
    - (b) if the worker has not provided a signed and witnessed consent and authority, the entitlements set out in Part B and Part C;
  - (2) legal practitioner's professional costs of the proceeding (including counsel's fees), calculated in accordance with the Scale of Costs that would in the absence of this Order have applied (but as if the amounts in the scale were reduced by 20 per cent), plus disbursements, but excluding any amount in respect of attendances or disbursements incurred prior to rejection of the statutory counter offer by the Authority or self-insurer or before the expiration of 21 days from receipt of the statutory counter offer, whichever is earlier.
- E. In addition to the sums specified at Parts A and B above (as the case may be), where proceedings are instituted by a worker pursuant to section 134AB(16)(b) of the Act, and costs are awarded to the worker, the worker's legal practitioner shall be entitled to legal practitioner's professional costs on a party and party basis of the proceeding (including counsel's fees), calculated in accordance with the Scale of Costs that would in the absence of this Order have applied (but as if the amounts

in the scale were reduced by 20 per cent) plus disbursements, but excluding any amount in respect of attendances and disbursements incurred prior to the delivery of the advice by the Authority or self-insurer.

F. Where a worker settles or compromises a claim and recovers damages prior to making an application, the worker's legal practitioner shall be entitled to costs on a party and party basis as follows:-

- (1) legal practitioner's professional costs, \$4,000 (inclusive of counsel's fees);
- (2) disbursements in accordance with Part A, paragraphs (4), (5) and Part C.

**Footnote**

The entitlement to costs and disbursements under this Order replaces any other entitlement of a worker to be awarded legal practitioners' professional costs and disbursements for or incidental to an application, a section 134AB(12) conference or proceedings commenced in accordance with section 134AB(12) or section 134AB(16) of the Act, and has full force and effect notwithstanding anything to the contrary in the **Legal Profession Act 2004**, the **Supreme Court Act 1986** or the **County Court Act 1958** or in any regulation, rules, order or other document made under any of those Acts.

**FORM D**

**CONSENT AND AUTHORITY TO RELEASE INFORMATION AND DOCUMENTS**

I consent to and hereby authorise any doctor, ambulance service, hospital or any other form of health service provider who has provided treatment and/or services to me in connection with any injury or condition the subject of this Section 134AB(4) application and/or in connection with any injury or condition that existed before this Section 134AB(4) application, to give access to all information and documents in relation to such injury or injuries or condition or conditions to the Victorian WorkCover Authority or my self insurer or their respective legal representatives upon request from such person and while that person is responsible for dealing with my Section 134AB(4) application.

I consent to and agree that any such doctor, ambulance service, hospital or any other form of health service provider shall give access to the information and documents the subject of a request made pursuant to this consent and authority upon receipt of a clear reproduction of this consent and authority.

This authority remains valid until such time as the Authority or self-insurer makes a determination under Section 134AB(7).

I will not withdraw or revoke this consent and authority for the duration of this period.

I declare that I clearly understand the terms and effect of this consent and authority.

Signature of worker

Name of worker (*printed*)

I declare that the worker appeared to understand the contents of this authority

Signature of witness

Name of witness (*printed*)

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**Attachment**

**Draft Legal Costs Order: s.134AG of the Accident Compensation Act 1985.**

**Summary of schedule of fees for plaintiff lawyers**

Evidence issues	Timing of decision to grant a serious injury certificate	Payments
Where a worker provides all the medical evidence necessary	Certificate granted prior to any proceedings	\$15,000
	Certificate granted after the lawyer issues an Originating Motion	\$13,500
	Certificate granted only relates to pain and suffering	\$11,475
Where a worker does <i>not</i> provide proper medical evidence in the first instance	Certificate granted prior to any proceedings	\$12,000
	Certificate granted after the lawyer issues an Originating Motion	\$9,600
	Certificate granted only relates to pain and suffering	\$8,034