

Legal services fact sheet for employers

The purpose of this fact sheet is to support employers' understanding of legal services in claims management.

1. What is litigation?

Litigated matters are disputes that have been escalated to the Personal Injury Commission or the Courts for resolution.

2. What is the role of claims service provider and icare legal services providers in the litigation process?

An icare legal services provider is a law firm contracted to provide legal services on behalf of icare. They will be engaged by your claims service provider to assist in deciding the actions to be taken on the litigated matter.

As agents of icare, claims service providers and legal service providers are bound by Government policies and procedures, including the Model Litigant Policy for Civil Litigation. This means that they must conduct themselves as a model litigant in the conduct of all litigation ensuring:

- » litigated matters and claims are dealt with promptly
- » legitimate claims are paid without litigation
- » consistent handling of claims and litigation
- » unnecessary litigation is avoided wherever possible
- » litigation costs are kept to a minimum
- » a claimant is not taken advantage of
- » technical defences are not relied upon.

3. What is the employer's role in the litigation process?

While icare acts in place of you as the employer because of the right of subrogation, decisions about the actions to be taken on a litigated matter must be made by your claims service provider on behalf of icare. You can contribute information to assist in defending the litigation, participate in discussions between the claims service provider and the icare legal service provider and attend hearings.

* Subrogation is the substitution of one person, for another, so that the rights and duties of the original person attach to a substituted one. For more detail about the terms of your statutory policy setting you can go to Schedule 3 of the *Workers Compensation Regulation 2016*.

4. When can a claims service provider engage with an icare legal services provider?

A legal referral can be made by a claims service provider when an opinion is necessary to assist with making a decision on claim liability under the *Workers Compensation Act 1987* (the **1987 Act**) and the *Workplace Injury Management and Workers Compensation Act 1998* (the **1998 Act**) or to provide advice on s151Z recovery prospects.

A legal referral cannot be made by a claims service provider on applications for review of liability or work capacity decisions on a claim where the applications are managed by icare's Dispute Resolution and Litigation Team.

Situations where it may be reasonable for your claims service provider to ask for legal advice include:

- » determining whether the injured person is a worker or a deemed worker of the employer
- » determining whether the injury is covered by the NSW legislation
- » claims where it is difficult to conclude whether the injury arose out of, or in the course of employment
- » claims involving serious or wilful misconduct
- » determining whether the defence of employer reasonable action can be relied on for a psychological injury
- » claims involving multiple injuries and/or employers
- » determining liability where the claim may be covered by a third party.

5. What is the process of a legal referral before a matter is litigated?

If you have concerns about liability for a reported workplace injury, you should raise these concerns with your claims case manager.



If your concerns involve issues where it may be reasonable to ask for legal advice, your case manager will escalate a request to a technical specialist. The technical specialist will review the request and determine if the issues identified requires external legal advice.



If external legal advice is considered appropriate, the technical specialist will prepare a legal referral form for an icare legal services provider clearly outlining the legal issues their opinion is sought on and attaching the information available on the claim.

The legal referral will be sent to your nominated preferred legal services provider from icare's panel or if you have not nominated a preference, to a legal services provider selected by your claims service provider from icare's panel.

The legal advice will usually be provided within 5 business days unless your claims service provider identifies a different timeframe.



6. How can you as an employer help with the legal referral process?

The legal advice will be prepared on the evidence available at the time of referral. Early provision of any information you can provide about the injury notified can assist in this process. While the type of information required will depend on the specific facts and issues to be explored on the claim, information that may assist could include:

- » all notifications of injury provided by the worker
- » the names and details of witnesses
- » investigations undertaken (this may include statement evidence)
- » complete copy of the worker's personnel file
- » copy of the worker's employment application
- » details of the worker's prior employment history
- » pre-employment medicals undertaken (if any)
- » copies of all applications for leave, sick, annual etc provided
- » medical certificates accompanying any sick leave taken
- » medical reports provided by the worker
- » current job description
- » all training and induction provided, signed, or acknowledged by the worker
- » all relevant employer policies and procedures made available to the worker
- » details of any documentary evidence that may be relevant to a section 11A defence (e.g. performance management, development plans; disciplinary documents, internal/HR investigations and their outcome)
- » transfer applications
- » employment termination records (if applicable)
- » grievance notifications submitted by the worker and employer action taken (if applicable).

7. What legal advice can my claims service provider share with me?

While your claims service provider and the icare legal services provider is unable to share copies of any legal advice, you can ask for a summary to assist you in managing a workplace injury and the return to work process. You can also ask your claims service provider to facilitate a discussion with them and the icare legal service provider if you have questions you would like to clarify.

8. What can you expect from the litigation process?

Any dispute in relation to an injured worker's claim should be actioned with urgency and dealt with honestly and fairly.

Your claims service provider should:

- » notify you early of any potential litigated matters to allow you time to review and consider information and prepare for potential future costs and impacts
- » partner with icare legal service providers and you as the employer as early as possible to ensure there is a clear understanding of how the litigation and the litigation strategy to be engaged may impact you and the claims strategy
- » keep you updated on progress in a timely manner.

9. What can I do if my expectations are not being met?

Contact your claims service provider in the first instance.

The icare Complaints Resolution Team can respond to complaints and enquiries relating to claims.

Contact 13 99 22

or email wiclaimsenquiries@icare.nsw.gov.au

or lodge a complaint online at

<https://www.icare.nsw.gov.au/contact-us/feedback-and-complaints>

Other resources available:

www.sira.nsw.gov.au/workers-compensation-claims-guide/about