

Proposed changes to the Worker's Injury Claim Form

Submission to Return to Work Victoria,
WorkSafe Victoria

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to Return to Work Victoria on proposed changes to the Worker's Injury Claim Form ('form').
2. The ALA supports the intention to modernise language, align formatting, and to improve usability and the worker's experience across platforms. The form must be consistent whether completed online, in a PDF or by hard copy.
3. ALA members particularly commend efforts to improve clarity around mental injury claims and to enhance accessibility of the form. We would, however, like to provide the following specific comments on the proposed changes.

Item 1 – Updating to existing wording in the form regarding the Certificate of Capacity

4. The ALA welcomes that the updated language regarding the Certificate of Capacity is more clear regarding the first certificate requirements and the role of medical practitioners.
5. However, some workers may be unfamiliar with the term "specialist doctor". The ALA recommends that this term is clarified in the form by providing examples – e.g. "specialist doctor, such as a psychiatrist or a physiotherapist".

Item 2 – Mental injury eligibility criteria

6. The ALA submits that this new section should not be added to the form.
7. Criteria for eligibility – whether physical or mental – are matters for agents to assess and on legal practitioners provide advice. It is not appropriate to try to condense the detailed mental injury eligibility legislation and case law surrounding reasonable management action into a short paragraph. Our understanding of the first two pages of the form is they are meant to assist with completing and lodging the claim form, not provide advice about eligibility.
8. As such, the ALA recommends that the following explanatory wording suggested at Item 6 be instead added to the information on page 1, as a new dot point regarding the Certificate of Capacity:

For mental injury claims, your medical practitioner should state the following on your certificate of capacity:

- *A mental injury diagnosis, if any.*
- *If the injury caused significant behavioural, cognitive or psychological dysfunction.*

Item 3 – Supports if the claim is accepted

9. The ALA supports this proposed change, as it will assist in providing useful and practical information to workers – particularly those who are not legally represented – as to what benefits/supports they may access if their claim is accepted.

Item 4 – If the claim is accepted

10. The ALA suggests that further explanation is provided in order to expand upon the requirement for earnings details to include payslips in the 52 weeks immediately before injury (or if less than 52 weeks of continuous employment, then for the duration of employment).
11. This, we submit, would ensure that the payslips fairly reflect the worker's earnings, especially if wages vary week to week.

Item 5 – Gender identity options

12. The ALA strongly supports this inclusive language update. It promotes respect for diverse identities and aligns with contemporary best practices in data collection.

Item 6 – Adding new wording under 'Worker's injury/condition details'

13. As stated above in our feedback on Item 2, this is information (not a question) and is more suitably placed on page 1 of the form with the other information.

Item 7 – Updating the wording of the injury questions

14. The ALA supports the amendments to clarify that not all claims relate to a discrete injury, and we recommend including the following to appropriately capture gradual process injuries: *“what happened and how did your injury/condition occur or develop”*.
15. We ask to see the draft form when it is completed to review the layout and spacing.
16. The ALA also recommends that the question seeking details of what the worker was doing is expanded upon further, as follows: *“what task/s were you doing when your injury/condition occurred or what task/s led to the injury/condition to develop”*. This would provide better clarity to workers who have a gradual process injury. Often workers who have these injuries interpret this question as asking about the last task they were completing when the injury arose, rather than the combination/repetitive nature of tasks.

Item 8 – Working from home

17. The ALA supports this proposed change. Including a tick box for *“While working from home”* is appropriate given the growth in remote work and reflects modern work arrangements.
18. We recommend that a box also be added for *“Working on-site”* for trades, which may always be at different locations and therefore not have a ‘usual workplace’.

Item 9 – Injuries occurring over time

19. The ALA agrees with the inclusion of a tick box for injuries occurring over the course of employment, but we do not believe that requesting details of when the worker first received treatment is necessary. We are prepared to receive further information regarding the need for this question.
20. The ALA submits that the next questions on the form asking when the injury/condition was first noticed and when the worker stopped work are sufficient for injuries developing over time.

Item 10 – Additional benefits information

21. The ALA submits that this addition is practical for accurate claims processing. However, this new wording should be limited from its current suggested format. We contend that there is no basis to ask: *“have you received, any type of benefit or compensation related **or unrelated** to the workplace injury”* (bold emphasis added).
22. We support asking about other income sources that may impact a worker’s entitlement to weekly payments; however, the question needs to be limited to this.

Item 11 – Return to work details

23. The ALA is of the view that this question should be removed entirely. We submit that the Certificate of Capacity adequately addresses this. This question does not add anything to assist agents to determine claim eligibility.
24. In the alternative, if the question should remain, the ALA opposes the new wording. The broadening of the question may lead to confusion in completing it, as well as misunderstanding in the interpretation of the answer provided.

Item 12 – Serving the claim form

25. The ALA agrees with the inclusion of a separate box for claims to be sent via email or other means. This reflects current modes of information delivery.

Item 13 – Supporting documentation

26. The ALA agrees with the provision of supporting documentation to assist the understanding of the injury/condition. It would be useful to provide an example list of what supporting documentation could be relevant – e.g. radiological scans, reports, and referral letters.

Item 14 – Expanded authority to release medical information

27. The ALA strongly opposes the widening of the information release authority.
28. While we appreciate that a broader authority may support inter-agency coordination, it raises significant privacy concerns. It is concerning to the ALA that material that may be unrelated or irrelevant can be sought by reason of this expanded authority.
29. This proposed change would also provide the agent with unfettered access to a broad scope of documents to which workers cannot object in accordance with the usual procedural rules that apply in litigation, nor will workers have rights to protect any undue invasion of privacy. This scope is inconsistent with case law, nor does it put an onus on the agent to have a legitimate forensic purpose for this material, as outlined in cases and authorities such as *Semi v VWA*,² *Commissioner of Australian Federal Police v Magistrates' Court of Victoria & Ors*,³ *Whioke v Baytech Traders Pty Ltd*,⁴ and *Thomas v Camec*.⁵

Item 17 – Inclusion of “Next step” subheading

30. The ALA supports this proposed change. This addition provides practical guidance on the process and on the future steps involved.

Item 18 – Volunteer claims

31. The ALA supports this proposed change, as it is a positive and necessary addition that increases clarity for volunteers.
32. We would suggest giving this more prominence on the form through formatting – for example, in a shaded box – to ensure it is not overlooked.

² [2022] VCC 714.

³ [2011] VSC 3.

⁴ [2020] VMC 13.

⁵ [2020] VMC 16.

Item 19 – Additional general suggestions

33. **Language simplicity:** While modernised language is welcome, plain-English alternatives should always be prioritised to ensure understanding by workers of all literacy levels. We would also support the form being downloadable in various languages in the future.
34. **Digital alignment:** The ALA recommends that all online fields (especially conditional logic and help prompts) mirror the paper form, especially where new options or instructions are introduced.
35. **Accessibility compliance:** The ALA recommends testing the updated form with users who have disabilities to ensure compliance with the Web Content Accessibility Guidelines standards and actual usability.
36. **Formatting:** The ALA recommends that the form should not contain compulsory fields or compulsory formats. The current form, for example, does not allow for times and dates to be completed in any format. The form should allow for a month and year to be completed, for example, when the specific date is not known.

Conclusion

37. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to Return To Work Victoria on the proposed changes to the Worker’s Injury Claim Form. We appreciate the comprehensive and considered approach to updating this form. These changes will go a long way toward making the claims process more accessible, fair and reflective of the diverse needs of Victorian workers.
38. The ALA looks forward to seeing the final version of the form following this consultation but *before* publication, so that we can provide further assistance to Return To Work Victoria.



Susan Accary

President, Victoria Branch Committee

Australian Lawyers Alliance