



Workers Compensation
Commission

March 2019

Matter No:

/20

(Office use only)

FORM 5A

Application to Register a Commutation Agreement

March 2019

Application

Application to Register a Commutation Agreement

This is the approved form for an application for registration under s87H of the *Workers Compensation Act 1987* of an agreement between the parties to commute the employer/insurer/scheme agent's* liabilities under the *Workers Compensation Act 1987*.

Applicant:

Respondent:

Filed by:

- | | | |
|---|--|--|
| <input type="checkbox"/> Worker | <input type="checkbox"/> Employer | <input type="checkbox"/> Self-insurer |
| <input type="checkbox"/> Worker representative | <input type="checkbox"/> Employer representative | <input type="checkbox"/> Insurer/scheme agent representative |
| <input type="checkbox"/> Dependant | <input type="checkbox"/> Insurer/scheme agent* | <input type="checkbox"/> WorkCover NSW |
| <input type="checkbox"/> Dependant representative | <input type="checkbox"/> Specialised insurer | <input type="checkbox"/> TMF Agent |

*Note scheme agent means scheme agent for the nominal insurer

NOTICE TO PARTIES

Before registration can take place, the requirements of the s87EA and s87F (2) of the *Workers Compensation Act 1987* must be complied with. Certification from WorkCover under section 87EA of the *Workers Compensation Act 1987* must be attached to this form.

A commutation agreement must not be entered into unless (before the agreement into):

- a legal practitioner instructed independently of the insurer/scheme agent and the employer has certified in writing that the legal practitioner has advised the worker on the full legal implications of the agreement, including implications with respect to any entitlement of the worker to compensation under the *Workers Compensation Legislation* or to benefits under any other law (including a law of the Commonwealth); and
- the worker has confirmed in writing that the worker has been given and understands the advice (s87F(2) *Workers Compensation Act 1987*).

Certification from the legal practitioner and worker under s87F (2) (a) and (b) of the *Workers Compensation Act 1987* must be attached.

- This form is not to be used where the worker is legally incapacitated. An 'Application for Determination to Commute Liability' (Form 5C) is to be used where the worker is legally incapacitated.
- The worker has 14 days after entering into a commutation agreement in which to withdraw from the agreement by giving notice in writing to the insurer/scheme agent (s87F(4) of the *Workers Compensation Act 1987*).
- Parties will be advised that the agreement is registered, or registration of the agreement is refused, or the agreement has been referred to an Arbitrator for review. Where the commutation agreement is referred to an Arbitrator for review, parties will be notified following the Arbitrator's recommendation that the agreement is registered or registration of the agreement is refused. (Rule 9.10 of the *Workers Compensation Commission Rules 2011*).
- Parties are reminded that the amount payable under this agreement is payable within 7 days of registration or as agreed by the parties (s87F (7) of the *Workers Compensation Act 1987*).
- A commutation agreement is of no effect unless it is registered (s87F of the *Workers Compensation Act 1987*).
- Before registering a commutation agreement, the Registrar may (on the application of a party to the agreement or the Registrar's own motion) refer the agreement for review by an Arbitrator (s87H (3) of the *Workers Compensation Act 1987*).

Please note that the information contained in the notice to parties is provided as general information only and does not constitute legal advice. The relevant legislative provisions governing the workers compensation jurisdiction should be consulted before submitting this Form to the Workers Compensation Commission.

1.5 Insurer/scheme agent details

Name of insurer/scheme agent:

Insurer/scheme agent number:

Postal or DX address:

Postcode:

Contact person:

Phone number:

Email address:

1.6 Insurer/scheme agent representative details

Firm or organisation:

Postal or DX address:

Postcode:

Name of representative:

Phone number:

Email address:

PART 2 – Information about the Worker

The following information is required to satisfy the requirements of s87H (5) of the *Workers Compensation Act 1987* should the commutation agreement be referred to the Commission for review at the request of the parties, or the Registrar's own motion.

Is liability to pay compensation under the Workers Compensation Acts in dispute? Yes No

If yes, please provide details of the dispute:

Date of injury: / /

Nature of injury:

General health of the worker:

Worker's occupation at time of injury:

Provide information about the worker's diminished ability to compete in an open labour market:

Is the worker entitled to any benefit from any other source? Yes No

If yes, provide details of the benefit:

PART 3 – Particulars of Agreement to be Registered

In accordance with section 87F or the *Workers Compensation Act 1987*, the parties have agreed that the following amount will be paid to the worker so as to commute:

the employer's full liability for compensation (including weekly benefits, medical expenses and lump sum compensation) under the *Workers Compensation Act 1987* in relation to the injury referred to in Part 2 of this Form; or

the employer's partial liability for compensation (including weekly benefits, medical expenses and lump sum compensation) under the *Workers Compensation Act 1987* in relation to the injury referred to in Part 2 of this Form.

Details are provided below:

Note: In accordance with section 87I (1) of the *Workers Compensation Act 1987*, if a liability in respect of compensation is only partially commuted, the balance of the compensation continues to be payable under and subject to the *Workers Compensation Act 1987*.

Lump sum amount proposed for commutation: \$

The Lump sum proposed for commutation is to be paid to:

The Worker

Other

either

Within 7 days of the date of registration or

on or before the / /

Have the parties reached an agreement as to the payment of costs? Yes No

If yes, provide details of the agreement:

Date of the commutation agreement: / /

Does a party to the agreement request the agreement be referred to the Commission prior to registration?

Yes No

PART 4 - Certification of Legal and Financial Advice

Legal Practitioner Certificate

I certify that I have advised the worker (with OR without the services of an interpreter) on the full legal implications of the agreement, including implications with respect to entitlement of the worker to compensation under this Act or to benefits under any other law [including a law of the Commonwealth].

I certify that I advised the worker on the desirability of the worker obtaining independent financial advice prior to the worker entering into the agreement, as to the financial consequences of the agreement.

I certify that I was instructed independently of the insurer/scheme agent and the employer in providing this advice.

Name of Legal Practitioner:

Signature of Legal Practitioner : _____ **Date:** / /

Workers acknowledgement of independent legal advice

I confirm that I received and understood the legal advice given to me on / / (insert date) by

(insert name of legal practitioner) (with OR without the services of an interpreter in my language).

I understand the full legal implications of this commutation agreement including implications for any entitlement I may have to any compensation under the *Workers Compensation Act 1987* or to benefits under any other law [including a law of the Commonwealth].

I confirm that

(insert name of legal practitioner) advised me of the desirability to obtain independent financial advice prior to my entering into the agreement.

Name of Worker:

Signature of Worker : _____ **Date:** / /

PART 5 - Signatories to the Agreement

Name of worker:

Signature: _____ **Date:** / /

Name of worker representative:

Signature: _____ **Date:** / /

Name of employer/insurer/scheme agent:

Signature: _____ **Date:** / /

Name of employer/insurer/scheme agent representative:

Signature: _____ **Date:** / /

PART 6 – Certification and Signature

Applicant's (or representative's) signature: _____ Date: / /

Certification by Legal Representative

Legal representative's signature: _____ Date: / /

Lodgment Details

Hand delivery	Level 20, 1 Oxford Street Darlinghurst NSW 2010
Postal address	PO Box 594 Darlinghurst NSW 1300
Document exchange	DX 11524 Sydney Downtown
Electronic lodgment	registry@wcc.nsw.gov.au
Facsimile	1300 368 018

Privacy of Personal Information

The privacy of personal information is important to the Workers Compensation Commission. The Commission collects personal information to register application forms and make decisions about disputes or claims. The NSW workers compensation laws permit the Commission to collect this information.

The Commission may give personal information to another person or agency (e.g. a doctor, a party, State Insurance Regulatory Authority) as required or authorised by law.

Decisions by the Commission will generally be published, including on the Internet, unless there are exceptional circumstances justifying the decision being withheld.

A person has a right to access their personal information and correct any inaccuracies.