

Commutation Agreement

[Strikethrough where not applicable]

DATE

THIS AGREEMENT is made on the [date] day of [month] 20[year]

PARTIES

[Full legal name and address of Worker]

(‘Worker’)

AND

[Legal name and address of employer]

(‘Employer’)

AND

[Name and address of insurer including whether Claims Service Provider of the Nominal Insurer/self-insurer/
specialised insurer/government self-insurer]

(‘Insurer’)

(the Parties)

1. Background

- 1.1. At all material times the Worker was employed by the Employer.
- 1.2. The Insurer was the workers compensation insurer of the Employer at all relevant times and is subrogated to the rights of the Employer.
- 1.3. The Employer is a member of the Government managed scheme administered by the Insurer and the Insurer may bind and exercise rights of the Employer.
- 1.4. The Employer is a self-insurer in the NSW Workers Compensation Scheme. In this agreement, a reference to an insurer is taken to be a reference to the Employer in their capacity as a self-insurer

2. Injury

- 2.1. The Worker has sustained an injury/injuries arising out of or in the course of employment: throughout the period of their employment with the Employer from [date] to [date] being:
 - insert description of injury and claim number
or
as a result of an injury/injuries on or about [insert description of injury, date(s) of injury and claim number(s)];
 - insert description of injury, date of injury and claim number
- 2.2. The Worker has received workers compensation payments from the Employer under the *Workers Compensation Act 1987* (NSW) (‘the Act’) in respect of the injury/injuries and claim(s).

3. Agreement

- 3.1. The Parties agree that the preconditions to commutation under sections 87EA(1) or (2) of the Act are satisfied.
- 3.2. The Employer agrees to pay the Worker the sum of [insert amount] ('the Settlement Sum') to commute to a lump sum liability for payments under the Act described at clause 3.3 in respect of the injury/injuries described at clause 2.1, excluding any latent diseases such as dust diseases or cancers.
- 3.3. The Parties agree that payment of the Settlement Sum extinguishes in full the following liabilities to the Worker under the Act in respect of [the injury/injuries] described at clause 2.1:
- a. Weekly payments of compensation under Part 3, Division 2 of the Act
 - b. Compensation for medical, hospital and rehabilitation expenses under Part 3, Division 3 of the Act of all kinds, including domestic assistance
 - c. Lump sum compensation under Part 3, Division 4 of the Act
 - d. Work injury damages under Part 5, Division 3 of the Act
- 3.4. The Insurer will pay the Settlement Sum to the Worker, by electronic funds transfer, cheque, or other agreed method, subject to the timeframes described at clause 7.2.
- 3.5. The Settlement Sum is in addition to all payments made to, for or on behalf of the Worker pursuant to the Act to the date of the Settlement Sum being paid.
- 3.6. The Parties agree that this Commutation Agreement is of no effect unless and until it is approved by the President of the Personal Injury Commission pursuant to Division 9 of Part 3 of the Act.
- 3.7. At any time before the Agreement is approved, the Worker may withdraw from an agreement by giving written notice to the insurer and the President of the Personal Injury Commission.

4. Statutory Deductions

- 4.1. The Worker acknowledges that [he has/she has/they] have been informed that [he/she/they] may be liable to pay an amount ('the Past Benefit') pursuant to the *Health & Other Services (Compensation) Act 1995* (Cth), the *Health & Other Services (Compensation) Care Charges Act 1995* (Cth), the *Social Security Act 1947* (Cth) (as amended), the *Social Security Act 1991* (Cth) (as amended) and/or the *Disability Services and Inclusion Act 2023* (Cth).
- 4.2. The Insurer is authorised to deduct from the Settlement Sum and repay amounts to statutory entities and the Commonwealth.

5. Medicare – authority to pay

- 5.1. The Insurer is authorised to deduct from the Settlement Sum any amount due under a valid Notice of Past Benefits issued under the *Health & Other Services (Compensation) Act 1995* which is served upon it at or before the time of approval by the Personal Injury Commission.
- 5.2. If no such Notice is received beforehand or within 7 days of the date of approval by the Personal Injury Commission, the Insurer is authorised to make an advance payment under the *Health & Other Services (Compensation) Act 1995* out of the Settlement Sum.
- 5.3. If the Insurer makes an advance payment under the *Health & Other Services (Compensation) Act 1995* out of the Settlement Sum, interest is not payable except as provided in clause 7.

6. Centrelink

- 6.1. The Insurer is to deduct from the Settlement Sum any monies payable to Centrelink owing under a Notice pursuant to the *Social Security Act 1991*.

7. Interest

- 7.1. To the extent that payments of compensation will continue pursuant to clause 8.1 of this Commutation Agreement, no interest is payable in respect of the Settlement Sum.
- 7.2. Where no payments of compensation are being paid pursuant to clause 8.1 of this Commutation Agreement, no interest is payable in respect of the Settlement Sum if the Settlement Sum is paid to the Worker within 28 days of the later of:
- a. date of approval of the Commutation Agreement by the President of the Personal Injury Commission;
 - b. in the event an advance payment is not made, the receipt by the Insurer of a final Notice pursuant to the *Health & Other Services (Compensation) Act 1995*; or
 - c. the date on which the Insurer became legally entitled to make payment after an appropriate Notice of Charge or clearance has been issued from Centrelink or other such organisation in relation to any amount of social security or other such payments that may be reasonable.
- 7.3. If, after 28 days of the later of the events set out in clause 7.2, the Settlement Sum has not been paid, interest calculated at the rate prescribed by the regulations is payable on any amount due and unpaid.

8. Workers Compensation Payments

- 8.1. If the Worker was, immediately before the date of this Commutation Agreement, receiving payments of compensation under the Act, the Employer or its Insurer will continue paying compensation in accordance with the Act until the date that the net amount of the Settlement Sum is paid to the Worker.

9. Independent legal advice

- 9.1. The Worker acknowledges and warrants that prior to the execution of this Commutation Agreement, the Worker has received independent legal advice on:
- a. the full legal implications of the agreement, including implications with respect to any entitlement of the Worker to compensation under this Act or to benefits under any other law (including a law of the Commonwealth), and
 - b. the desirability of the Worker obtaining independent financial advice, before the Worker enters into the agreement, as to the financial consequences of the agreement,
- 9.2. The Worker acknowledges and warrants that they have been given and understand the advice referred to in clause 9.1.

10. Independent financial advice [to be deleted if Settlement Sum does not exceed \$100,000]

- 10.1. The Worker acknowledges that prior to the execution of this Commutation Agreement, the Worker has received independent financial advice in relation to the Commutation Agreement from a person who holds or operates under an Australian Financial Services licence.

11. Costs of the Commutation Agreement

- 11.1. Except as provided by the terms of this Commutation Agreement, and distinct from clauses 9 and 10, the Worker and the Employer are each separately responsible for their own costs and expenses in relation to this Commutation Agreement.

12. Governing law

- 12.1. The construction, validity and performance of this Commutation Agreement is governed by and construed in accordance with the laws of the State of New South Wales and the Parties submit to the exclusive jurisdiction of the courts of New South Wales.

13. Severability

- 13.1. If anything in this Commutation Agreement is invalid, unenforceable, illegal or void, that part is, or will be, severed from this Commutation Agreement so that all parts that are not, or do not become, void or unenforceable remain in full force and effect.

14. Bar to proceedings

- 14.1. The Parties agree that this Commutation Agreement, if approved by the President of the Personal Injury Commission, may be pleaded as a complete bar to any action, suit, proceeding or third party proceeding commenced, continued or taken by any party to this Commutation Agreement or on that party's behalf in connection with any of the matters or liabilities referred to in this Commutation Agreement except for breach of a provision of this Commutation Agreement.

15. Acknowledgement

- 15.1. The Parties acknowledge that they have read, understood and freely and voluntarily enter into this Commutation Agreement.
- 15.2. The Worker acknowledges they have sought, or have had the opportunity to seek, independent legal and financial advice in relation to this Commutation Agreement.

16. Electronic Signatures and Counterparts

- 16.1. Subject to applicable laws, the Parties may execute this Commutation Agreement electronically and in one or more counterparts. All counterparts will be taken to constitute one instrument.

17. Entire agreement

- 17.1. This Commutation Agreement records the entire agreement between the Parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the Parties in relation to the subject matter of this document.

Certification

Certification of legal advice

I certify that I have advised the Worker on:

- the full legal implications of the Commutation Agreement, including implications with respect to entitlement of the Worker to compensation under the Act or to benefits under any other law including a law of the Commonwealth; and
- the desirability of the Worker obtaining independent financial advice prior to the Worker entering into the Complying Agreement, as to the financial consequences of the Commutation Agreement.

I was instructed independently of the Insurer and the Employer in providing this advice.
This advice was provided with/without services of an interpreter. [delete as appropriate]

Name of legal practitioner

Firm

Signature

Date (DD/MM/YYYY)

Certification by Insurer/Self insurer of provision of independent financial advice to Worker [delete if Settlement Sum less than \$100,000]

I certify that the Worker has been provided with the required independent financial advice, from the financial advisor detailed below, as to the financial implications of the Commutation Agreement.

Name of financial advisor	AFS Licence Number
Name	Position
Signature	Date (DD/MM/YYYY)

Signatures

Signed on behalf of the Insurer/Self-Insurer

Name	Position
Signature	Date (DD/MM/YYYY)

Signed on behalf of the Employer [delete as appropriate]

Name	Position
Signature	Date (DD/MM/YYYY)

Signed by the Worker

Name
Signature
Date (DD/MM/YYYY)

[Drafting note: Please insert the following if the Agreement is witnessed electronically]

This document was signed and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000*.