

Date

2021

Parties

Worker

Address

Employer

Address

Insurer

Address

Background

- A At all material times the Worker was employed by the Employer.
- Bwas the Worker's Compensation insurer of the Employer at all relevant times and is subrogated to the rights of the Employer.
- C The Worker alleges that as a result of the Worker's employment duties performed throughout the period of the Worker's employment with the Employer, and as a result of an incident on or about the Worker sustained physical and psychological injury (the **Injury**).
- D The Worker has received workers compensation benefits from the Employer under the *Workers Compensation Act 1987*.
- E On or about Worker brought a claim for work injury damages against the Employer (the **Proceeding**).
- F The Worker alleges that the Injury was caused by the Employer's negligence, breach of statutory duty and/or breach of contract, and seeks payment of damages.
- G The Employer denies all liability in respect of the Injury and the Proceeding.
- H The Parties have agreed to settle all claims and allegations made against the Employer by the Worker without admission of liability by the Employer and to finalise all entitlements that may exist between the Worker and the Employer (not including any claim for hearing loss).

Operative Provisions

1 Agreement

- 1.1 The Employer agrees to pay the Worker in full and final settlement of the Proceeding, and in consideration of the Worker's agreement to wholly and forever abandon any claim against the Employer in relation to the Injury, the allegations of negligence and the Proceeding and to provide the release and indemnity set out in this Deed of Release, damages in the sum of \$ clear of workers compensation payments made to date and inclusive of costs and all disbursements (the **Settlement Sum**).
- 1.2 The Settlement Sum is in addition to all payments made to, for or on behalf of the Worker pursuant to the *Workers Compensation Act 1987*.
- 1.3 Except as provided in clause 6, the Insurer will not pay in addition to the Settlement Sum any further compensation pursuant to the *Workers Compensation Act 1987*.

2 Directions as to payment

- 2.1 The Worker authorises and directs the Insurer to pay the Settlement Sum to the Worker's solicitors by means of an electronic funds transfer to the trust account of those solicitors.
- 2.2 The Worker agrees that receipt of the Settlement Sum by his solicitors shall constitute discharge of the obligation on the Insurer and/or the Employer to pay the Settlement Sum.

3 Statutory deductions

- 3.1 The Worker acknowledges that he has been informed that he 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 Act 1986* (Cth).
- 3.2 The Insurer is at liberty to deduct from the Settlement Sum and repay amounts to statutory entities and/or the Commonwealth.

4 Medicare – authority to pay

- 4.1 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 settlement.
- 4.2 If no such Notice is received beforehand or within 7 days of the date of this Deed of Release, the Insurer is authorised to make an advance payment under the *Health & Other Services (Compensation) Act 1995* out of the Settlement Sum.

- 4.3 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 5.

5 Centrelink

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

6 Interest

- 6.1 No interest shall be payable in respect of the Settlement Sum, if same be paid to the Worker's solicitor within 28 days of the later of:
- (a) the date of settlement;
 - (b) the date of signature of this Deed of Release by the Worker;
 - (c) the receipt of an Authority to Receive satisfactory to the Insurer;
 - (d) the receipt by the Insurer of a duly completed Medicare Compensation Recovery Notice of Judgement or Settlement in the event of an advance payment being made;
 - (e) 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*;
 - (f) 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 Workers compensation payment

- 7.1 If the Worker was, immediately before the date of this Deed, receiving payments of weekly compensation under the *Workers Compensation Act 1987*, the Employer or its Insurer will continue paying weekly compensation subject to production of Certificates of Capacity, until the date that the net amount of the Settlement Sum is deposited by electronic funds transfer to the trust account of the Worker's solicitors.
- 7.2 If the Worker supplies the Insurer with supporting tax invoices within 14 days of the date of this Deed, the Insurer will pay or reimburse reasonable medical and other treatment expenses pursuant to section 60 of the *Workers Compensation Act 1987* which were pre-approved by the Insurer and incurred before the date of this Deed.

8 Release

- 8.1 The Worker releases the Employer and the Insurer and any of their respective present or past officers, employees and agents from all claims of any kind arising out of, connected with or incidental to the Worker's claim, the Injury and the Proceeding.
- 8.2 The Worker indemnifies the Employer and the Insurer and any of their respective present or past officers, employees and agents:
- (a) in respect of all claims of any nature which the Worker may at any time bring against the Employer and/or the Insurer; and
 - (b) in respect of all loss suffered by the Employer and the Insurer arising out of or in connection with the Worker's claim (but not including any losses in the nature of workers compensation payments, legal costs, claims administration costs, policy excess payments and increases to premiums).
- 8.3 The Worker covenants in favour of the Employer and Insurer and their respective present or past officers, employees and agents not to:
- (a) bring or pursue;
 - (b) procure a third party to pursue;
 - (c) provide financial support in relation to; or
 - (d) otherwise support,
- any claim in respect of any matter which is the subject of the releases set out in this Deed of Release.

9 Independent legal advice

The Worker acknowledges and warrants that prior to the execution of this Deed of Release, the Worker has received, or has had the opportunity to receive, independent legal advice about, and understood the nature and effect, of the terms of this Deed of Release.

10 Costs of the Deed

The Worker and the Employer are each separately responsible for their own costs and expenses in relation to this Deed of Release.

11 Governing law

The construction, validity and performance of this Deed of Release 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.

12 Severability

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

13 Acknowledgement

The Parties acknowledge that they enter into this Deed of Release fully and voluntarily upon their own information and investigations.

14 Bar to proceedings

The Parties agree that this Deed of Release 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 Deed of Release or on that party's behalf in connection with any of the matters referred to in this Deed of Release except for breach of a provision of this Deed of Release.

15 Confidentiality

- 15.1 The Worker and the Employer will keep the terms of this Deed of Release and the terms of the settlement confidential and must not disclose them to any other person except as required by law.
- 15.2 A party may make any disclosure of the terms of this Deed of Release necessary to:
- (a) comply with any law or the requirements of any regulatory body;
 - (b) discuss the terms with a legal or financial adviser, but only on the condition that any person receiving the information will maintain its confidentiality;
 - (c) any financial adviser, auditor, banker or insurer on receipt of an undertaking from that person to keep the terms confidential.
- 15.3 The Worker shall keep confidential all of the Employer's confidential information.

16 Entire agreement

- 16.1 This Deed of Release contains the entire agreement between the Worker and the Employer, and between the Worker and the Insurer, with respect to its subject matter.

Executed as a deed

Signed sealed and delivered as a deed by

Name of Worker

Signature of Worker

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In the presence of:

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Signature of Witness

Name of Witness

Date:

**Signed on behalf of the Employer by
its authorised legal representative**

Name and Position

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Signature

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Name of Witness

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Signature of Witness

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Date

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**Signed on behalf of the Insurer by
its authorised legal representative**

Name and Position

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Signature

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Name of Witness

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Signature of Witness

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Date

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