

Offences of fraud and false or misleading statements or documents

The *Workers' Compensation and Rehabilitation Act 2003* (the Act) requires that a person must not in any way defraud or attempt to defraud an insurer. A person can be (without limitation) a worker/claimant, employer, service provider, or any other person or business.

The Act further requires that a person must not make a statement, or provide a document, to the Workers' Compensation Regulator, an insurer or a registered person (a medical/rehabilitation provider) that the person knows it is false or misleading in a material particular.

When are insurers required to make a referral?

Section 536 of the Act provides that **once an insurer (or its third party claims manager or legal representatives) forms a reasonable belief** that a person (potential defendant) has:

- committed fraud; and/or
- provided false information to the insurer and/or a registered person,

then the insurer must give the Workers' Compensation Prosecutions Unit (WCPU), Workers' Compensation Regulatory Services information in its possession which supports that reasonable belief **without delay**.

A **reasonable belief** requires the existence of facts or objective circumstances which provide tangible support for the proposition that an offence has been committed. This does not mean that an insurer must have sufficient information to prove the offence to the requisite criminal standard (i.e. beyond reasonable doubt) prior to making a referral.

Some examples of where an insurer likely holds sufficient evidence to form a reasonable belief include:

- obtaining medical records which indicate a relevant pre-existing medical history which the worker has not disclosed to the insurer;
- obtaining a witness statement or surveillance which indicates that the worker may be exaggerating their symptoms and acting outside of their stated capacity;
- receiving information which confirms the worker returned to employment, self-employment or unpaid work/volunteering during their statutory claim and did not disclose this work to the insurer; and
- receiving a report from a registered person where the report indicates that the potential defendant has provided false and/or misleading information (i.e. information which could be said to be false and/or misleading due to conflicting evidence) to that registered person.

What are some indicators of suspicious behaviour?

The following may be indicators of fraudulent behavior that an insurer should be aware of:

- Inconsistent or unusual background noise during phone conversations
- Inconsistent Facebook/other social media posts
- Missing numerous medical/rehabilitation appointments
- Becoming defensive and/or aggressive when discussing a claims issue
- Lodging partially complete or unsigned forms
- Being vague or changing stories

- Changing doctors over the period of incapacity
- Not answering calls during the day (or at all) or regularly not answering their home phone
- Moving interstate
- Clothing inconsistent with representations (work clothes, sports clothes, overalls)
- Using an intermediary to communicate information regarding their condition
- Discrepancies in wage declarations from employers
- Relationships between worker and employer (e.g. they have the same last name)
- The employer saying it will obtain statements from witnesses/co-workers instead of the insurer
- Being obstructive to investigations
- Witness/co-worker statements are very similar (evidence of the witnesses begin coached) or witnesses/co-workers are vague
- Incomplete time and wage records or inconsistent invoices from contractors
- Business advertising for work without a current workers' compensation insurance policy

What can an insurer do?

Insurers should ensure claims management staff are trained and equipped to take detailed written file notes of all conversations and if appropriate ask the person to respond in writing (or email).

Insurers should not be concerned with “tipping” a person off if they are aware of or suspicious of potentially fraudulent behavior. If an insurer suspects that a person has been dishonest, it is beneficial to be direct and ask the person. It is in all parties' interest that any allegations are promptly addressed and any fraudulent activity is ceased at the earliest time.

Tips when a claim is lodged

- Ensure all claim related documentation is completed in full. If it is not, follow up the unanswered questions in your initial phone conversations or email.
- Clearly explain to each party their responsibilities and obligations during the claim process and ask the person if they understand their obligations and take detailed notes of this conversation. (e.g. tell claimants that they must advise the insurer if they continue, start or return to: paid or unpaid work; self-employment (including “gig economy work” like driving for Uber); carrying on a business; or volunteer work).

Tips during the management of a claim

- Make regular contact with claimants and ask them questions about how they're spending their time, for example: What have you been doing to fill your time? Are you working? What can and can't you do? How far can you bend forward? How long can you walk for? What about when you take pain medication?
- If the person is attending a medical provider, request the medical provider ask specific questions about capacity, restrictions, pain, daily activities, hobbies etc. and request they take precise notes about what is said.

Tips when obtaining Surveillance

- Call the person the day you obtain surveillance and ask specific questions regarding the daily activities (e.g. what are you doing today?).
- It is best to obtain at least three consecutive days of surveillance to ensure consistency in presentation (this helps negate a “good day/bad day argument”)

Questions?

Please contact the Workers' Compensation Prosecutions Unit by emailing wlegal@oir.qld.gov.au



Unless otherwise noted, this document is available under a Creative Commons Attribution 4.0 International Licence (<https://creativecommons.org/licenses/>). You are free to copy and redistribute the work, so long as you attribute The State of Queensland. The material presented in this publication is distributed by the Queensland Government for information only and is subject to change without notice. The Queensland Government disclaims all responsibility and liability (including liability in negligence) for all expenses, losses, damages and costs incurred as a result of the information being inaccurate or incomplete in any way and for any reason.