President’s Welcome

Welcome to the sixth E-Bulletin of the Workers Compensation Commission.

This e-bulletin outlines:
- Lodging material with the Commission
- Amending an application or reply
- Dealing with material produced under Direction
- Discontinuance
- Permanent Impairment Disputes
- Oral Evidence in Proceedings
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- Assessment of Costs
- New brochures available to assist parties

Justice Terry Sheahan
President
19 February 2003

Lodging Material with the Commission

Rule 10(2) of the Interim Workers Compensation Commission Rules 2001 requires that:

(2) Every document lodged at or served on the Registry must:
   (a) be in the approved form and otherwise in substantial compliance with these rules and any directions issued by the Registrar, and
   (b) be clearly written, typed or reproduced.

Where material is received which does not meet these requirements, it will be returned to the sender under Rule 10(3), which provides that the Registrar may refuse to accept, file, seal or issue any document that, in the opinion of the Registrar, contravenes Rule 10(2).

Where parties choose to lodge material with the Commission by fax, any further copies of the material sent by other means to the Commission will be returned to the sender unsealed.
Amending an Application or Reply

Parties who seek to lodge an amended application or reply in the Commission can only do so if the Commission has issued a Direction to allow the amendment. If you are lodging an amended application or reply as a result of a Direction or Order from the Commission you will need to clearly identify what has been amended. The simplest way to achieve this is to make the amendments in italics or underline them.

If an applicant wishes to amend the substantive claim or introduce new evidence, a further application to resolve a dispute is required. For example, if you have lodged a claim for weekly benefits and then seek to amend your claim to include permanent impairment, you must lodge a new application. You may request that the matters be heard concurrently.

Dealing with Material Produced under Direction

Documents produced under Direction are not admitted into evidence other than by leave of the Arbitrator under Rule 16(3) or 27(3) of the *Interim Workers Compensation Commission Rules 2001*.

Documents, which have not been admitted into evidence, do not form part of the file and are therefore not provided to the Arbitrator during proceedings.

Should a party be granted leave for the admission of documents produced under direction to be admitted into evidence, it is the party’s responsibility to provide a copy of those documents to the Commission to be included in the proceedings file.

The Commission will shortly be providing enhanced facilities for the viewing and copying of documents produced under Direction on level 4, 1 Oxford Street.

Discontinuance

Parties are able to discontinue proceedings at any time in the Commission, either because the parties reach agreement, or the applicant elects to discontinue proceedings.

Where parties reach agreement and no longer wish to continue with proceedings, or the applicant elects to discontinue proceedings, Form 14A or 14B must be lodged with the Registry.

Where the parties have reached agreement and wish this to be recorded, Form 14A provides for the parties to record the terms on which agreement was reached, if the parties wish this to occur. Parties may reach agreement and lodge Form 14A without advising the terms of the agreement.

Where the applicant no longer wishes to continue with proceedings, Form 14B must be lodged with the Registry, and served on all other parties to the dispute.
Once received by the Registry, the forms are sealed and returned to the parties. The matter is considered to be finalized.

Where parties settle proceedings during the teleconference or conciliation conference/arbitration hearing, the Arbitrator may make orders by consent if requested by the parties. Note Arbitrators are only able to make orders within the legislation.

**Permanent Impairment Disputes**

Parties are encouraged to resolve their medical disputes lodged with the Commission rather than rely on referral to an Approved Medical Specialist. All medical disputes where a reply is received are being referred to an Arbitrator to facilitate the parties in reaching their own agreement.

As with all other types of disputes, parties are more likely to be satisfied with the resolution process if they control the outcome, rather than receiving a binding assessment from an Approved Medical Specialist.

Where parties reach agreement on permanent impairment disputes, the agreement can only be recorded by the Commission through registration of an “Application for Registration of Agreement under s66A” (Form 3). The agreement on s66 cannot be included in orders made by the Arbitrator.

**Oral Evidence in Proceedings**

Rules 36 and 37 of the *Interim Workers Compensation Commission Rules 2001* outline the requirements for statements to be provided by applicants and respondents with respect to any witness that a party proposes to call during proceedings. Under Rule 36(2) a party may call a witness to give evidence where a statement has not been filed in accordance with Rule 36(1) only with the leave of the Commission.

Practice Direction No.3 of 2002 Expert Evidence should also be considered. The Practice Direction provides that the Arbitrator will consider at the teleconference whether there is a demonstrated need to hear oral evidence from witnesses. The Arbitrator will then advise the parties of the witnesses, including expert witnesses, who will be permitted to give oral evidence at the scheduled conciliation conference and arbitration hearing.

**Workers Compensation Commission Seminars**

The Workers Compensation Commission is putting together a state-wide program of seminars and practical training workshops to provide advice on the Commission’s processes and procedures for legal practitioners and their staff.

The Commission is collaborating with regional law societies in developing the program, but would also like to hear from practitioners who are interested in attending a seminar: contact Mike Oldfield at the Commission, phone 8281 6370, email Mike.Oldfield@wcc.nsw.gov.au or fax 1300 368 018.
Death Claims

The following outlines the requirements of the legislation in relation to death claims, and consequently the evidence required by the Commission in considering these claims or agreements.

In the case of whole dependency, section 25(1)(a) of the Workers Compensation Act 1987 (the Act) provides that persons wholly dependent for support upon a worker at the time of death shall be entitled to a prescribed amount of compensation. In addition, a weekly amount is payable in respect of each dependent child. The amount payable under section 25(1)(a) must be apportioned between dependents, whereas the weekly amount is payable in respect of each dependent child.

Where there are no persons wholly dependent for support on a worker at the time for death but the worker has person(s) partially dependent for support, section 26 of the Act provides that such persons are entitled to an amount up to the maximum prescribed under s25(1)(a) of the Act.

If the employer/insurer does not agree to pay the maximum amount, the following applies:

(a) the parties may agree on an amount, subject to approval by the Commission that the amount is 'reasonable and proportionate' to the injury to the dependent(s), or

(b) in the absence of agreement, the Commission is to determine the amount that is reasonable and proportionate

In the case of (a) and (b) above, the Commission also has discretion in relation to the weekly amount payable to each dependent child under section 25(1)(b) of the Act.

In death claims, the following issues arise when a matter is referred to the Commission:

1. Evidence of death (e.g. death certificate)
2. The death must have resulted from an injury as defined by section 4 of the Act
3. The issue of who is dependent is a question of fact to be determined
4. The issue of whole or partial dependency is also a question of fact to be determined
5. As the amount payable under s25(1)(a) or section 26 is a single sum to be apportioned between all dependents, the Commission must be satisfied that thee are no other persons dependent for support upon the worker at the time of death
6. In cases of partial dependency, the Commission must be satisfied that the amount agreed to is reasonable and proportionate
7. The Commission may also apportion between the dependents the amount payable under section 25(1)(a) or section 26.

Even where parties have agreed to settle a claim, the Commission requires evidence as to dependency (e.g. evidence of the Applicant) and original documentation (e.g. death certificate, marriage certificate, birth certificate) to be lodged with the application.

Refer [2002] NSW WCC11 Daniel Anthony Whitehouse v EXO Pty Ltd t/as Tibby Rose Auto
Work Injury Damages Claims

The suite of material developed for Work Injury Damages is now available on the website.

This includes the Registrar's Guideline For Work Injury Damages In The Workers Compensation Commission, which provides an overview of the procedures for work injury damages claims, in addition to the following forms:

Form 11 - Direction for Access to Information and Premises
Form 11A - Certificate of Service for Work Injury Damages Claims
Form 11B - Application to Cure a Defective Pre-filing Statement
Form 11C - Application for Mediation to Resolve Work Injury Damages Claim
Form 11D - Response to an Application for Mediation to Resolve Work Injury Damages Claim

Assessment of Costs

The Commission forms for assessment of costs, and appeal against the Registrar's decision in cost assessment are available on the website.

Form 15 - Application for Assessment of Costs
Form 16 - Appeal from Registrar's Determination on Costs

New Brochures

A range of new brochures to assist parties in understanding and participating in resolution of their dispute within the Commission has been produced in electronic and hard copy form. The key brochures have been translated into the following languages: Arabic, Chinese, Croatian, Greek, Italian, Macedonian, Serbian, Spanish, Turkish and Vietnamese.

The following new brochures are available from the website www.wcc.nsw.gov.au (under the heading 'About the Commission') or by contacting the Commission. Please contact the Commission if you would like to receive copies of these brochures for distribution.

Questions of Law
Outlines the procedural requirements for lodging a Question of Law

How to Register a Section 66A Agreement
Provides a guide to parties who wish the Commission to record the agreement reached in relation to permanent impairment disputes

Appeals against Decisions by Arbitrators
Outlines the procedural requirements for appealing against a decision of an Arbitrator
Workplace Injury Management Disputes
Provides an overview to how the Commission deals with Workplace Injury Management Disputes

Interim Payment Directions
Provides an overview to applying for an Interim Payment Direction

Medical Appeals - Appeals against Assessments by Approved Medical Specialists
Provides an overview to appealing against a medical assessment

Closing the Dispute Process
Provides an overview to parties who have reached agreement or no longer wish to continue with the process of dispute resolution in the Commission

Access & Equity Service Charter Summary
Outlines the Commission’s commitment to access and equity across all services delivered by the Commission

Contact the Commission

For information, assistance or a request for dispute resolution, please contact the Workers Compensation Commission between 8.30am and 4.00pm Monday to Friday:

By telephone: 1300 368 040

TTY (for people with hearing impairments): (02) 9261 3334

By facsimile: 1300 368 018

In person at: The Registry, Level 21, 1 Oxford Street, Darlinghurst NSW 2010

Postal Address: PO Box 594, Darlinghurst NSW 1300 or

Document Exchange: DX11524, Sydney Downtown

Email: registry@wcc.nsw.gov.au

Further information and forms are available at: www.wcc.nsw.gov.au