



# Workers Compensation Commission E-Bulletin

March 2013

No. 53

## Contents

Welcome to E-bulletin No. 53 of the Workers Compensation Commission.

This bulletin outlines:

- Lodgement of new applications – extension of deadline
- Update on lodgements and resulting delays
- Applications to expedite proceedings
- Late document lodgements
- Early issuing of directions for production
- Question of law update
- Recent decisions – weekly compensation and the 2012 amendments
- Recent decisions – lump sum compensation and the 2012 amendments

### **Lodgement of new applications – extension of deadline**

By the *Workers Compensation Amendment (Further Transitional) Regulation 2012* the awarding of costs in proceedings commenced in the Commission, in relation to a claim for compensation made before 1 October 2012, has been extended to proceedings commenced before 31 March 2013. Given that 31 March 2013 is a Sunday, by s 36 of the *Interpretation Act 1987* the Commission will accept applications, in accordance with the Regulation and Rule 8.1 of the Commission Rules, on 2 April 2013. A copy of the Regulation can be accessed at <http://www.legislation.nsw.gov.au/>.

### **Update on lodgements and resulting delays**

As at the end of February 2013 the number of Form 2 and Form 2D applications pending before the Commission increased to 9,674. Prior to the 2012 legislative amendments, Form 2 and Form 2D applications pending before the Commission remained around 3,500 matters (3,536 as at May 2012). The extraordinary number of disputes lodged since the middle of last year has significantly impacted the delay to teleconference and the timely resolution of disputes.

### **Applications to expedite proceedings**

The Commission will continue to expedite proceedings in Form 2 and Form 2D matters where exceptional circumstances exist. Applications should be made in writing to the Registrar and be supported by medical or other appropriate documentation.

Exceptional circumstances include terminal illness and the need for urgent medical treatment. Given the number of weekly compensation matters currently listed in the Commission, financial hardship will not generally distinguish a matter for expedition.

### **Late documents lodgements**

The Commission is concerned at the growing number of late documents being lodged. In the first two months of this year, over 2,000 late documents applications were lodged comprising over 5,500 late documents. Over 50% of late documents applications were by workers, particularly in relation to medical evidence and worker statements.

The lodgement of late documents creates an unnecessary administrative burden for the Commission and the volume means that late documents applications cannot be dealt with until the teleconference.

Practitioners are reminded that Form 2 and Form 2D applications should not be commenced in the Commission if matters are not ready to proceed.

### **Early issuing of directions for production**

The Registrar's Interim Guideline in relation to issuing directions for production prior to the teleconference has been revised and extended to 30 August 2013. The revised guideline allows directions to be issued where there has been failure to oppose the issuing of the direction for production and removes the requirement to provide reasons for seeking production of the documents. Provision is also made to apply to the Registrar to determine contested directions, as an alternative to waiting until the teleconference.

Many practitioners are still waiting until the teleconference to make application to issue directions for production, which unnecessarily adds further delay to the resolution of disputes.

### **Question of law update**

#### *Goudappel v ADCO Constructions Pty Ltd*

Following the legislative changes in June 2012, a Question of Law was referred to the President in *Goudappel v ADCO Constructions Pty Ltd*. The question was:

“Do the amendments to Division 4 of Part 3 of the *Workers Compensation Act* 1987 introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act* 2012 apply to claims for compensation pursuant to s 66 made on and after 19 June 2012 where a worker has made a claim for compensation of any type in respect of the same injury before 19 June 2012?”

The President determined the question as follows:

“The amendments to Division 4 of Part 3 of the *Workers Compensation Act* 1987 introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act* 2012, apply to claims for compensation pursuant to s 66 made on and after 19 June 2012, where a worker has made a claim for compensation of any type in respect of the same injury before 19 June 2012.”

The worker lodged an appeal against the determination in the Court of Appeal on 22 January 2013 seeking the answer be amended to state that the amendments do not apply. The appeal is listed for hearing on 28 March 2013.

## Question of law update (cont.)

### *Di Matteo v RDM Ceramics Pty Ltd*

A Question of Law application in the matter of *Di Matteo v RDM Ceramics Pty Ltd* was referred to the President. The questions to be determined are:

1. Do the amendments to Division 4 of Part 3 of the *Workers Compensation Act 1987* introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act 2012* apply to claims for permanent impairment where the injury occurred before 1 January 2002?
2. Do the amendments to Division 4 of Part 3 of the *Workers Compensation Act 1987* introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act 2012* disallow a worker who has made a claim for permanent impairment compensation prior to 19 June 2012, making a further claim in respect of the same injury for permanent impairment compensation on or after 19 June 2012?

A hearing was held on 18 February 2013. Following the hearing, the parties were directed to file further submissions by 8 March 2013. The determination is currently reserved.

### *Spinelli v Integrated Labour Network Pty Ltd*

A Question of Law application in the matter of *Spinelli v Integrated Labour Network Pty Ltd* was referred to the President.

The questions to be determined are:

1. Is cl 11 of Sch 1 of the *Workers Compensation Amendment (Transitional) Regulation 2012* invalid?
2. Do the amendments to Div 4 of Pt 3 of the *Workers Compensation Act 1987* introduced by Sch 2 of the *Workers Compensation Legislation Amendment Act 2012* apply to a worker injured on or after 1 January 2002, who has made a claim for lump sum compensation pursuant to ss 66 and 67 of the 1987 Act prior to 19 June 2012, so as to disentitle them from making a further claim for lump sum compensation pursuant to s 66 of the 1987 Act on or after 19 June 2012 in respect of additional permanent impairment resulting from the same injury?
3. Do the amendments to Div 4 of Pt 3 of the *Workers Compensation Act 1987* introduced by Sch 2 of the *Workers Compensation Legislation Amendment Act 2012* apply to a worker injured on or after 1 January 2002, who has made a claim for lump sum compensation pursuant to ss 66 and 67 of the 1987 Act prior to 19 June 2012, so as to disentitle them from making a further claim for lump sum compensation pursuant to s 67 of the 1987 Act on or after 19 June 2012 in respect of additional permanent impairment resulting from the same injury?
4. Does s 322A of the *Workplace Injury Management and Workers Compensation Act 1998* prevent a worker injured on or after 1 January 2002 and whose injury is the subject of a Medical Assessment Certificate in respect of the degree of permanent impairment in respect of a claim for lump sum compensation made prior to 19 June 2012 from having a further medical dispute in relation to the degree of permanent impairment of the worker as a result of the same injury referred for medical assessment by an Approved Medical Specialist on or after 19 June 2012 for the purpose of a claim for:
  - i Lump sum compensation pursuant to s 66 of the 1987 Act;
  - ii Lump sum compensation pursuant to s 67 of the 1987 Act;
  - iii Work injury damages?

The parties have been directed to file submissions by 15 March 2013 and submissions in reply by 22 March 2013. The matter is listed for hearing on 11 April 2013.

## Recent decisions – weekly compensation and the 2012 amendments

*Bowker v Department of Community Services* [\[2013\] NSWWC 56](#), 13 February 2013, Arbitrator B Batchelor

Calculation of weekly benefits from 1 January 2013 in accordance with s 37(2)(a) of the 1987 Act as amended by the 2012 amending Act. Applicant working not less than 15 hours per week. Earning from secondary employment.

*Komljenovic v Facility Management Solutions Pty Ltd* [\[2013\] NSWWC 69](#), 26 February 2013, Snr Arbitrator M Snell

Applicant not an existing recipient of weekly payments of compensation immediately before the commencement of weekly payments amendments as defined by Clause 1, Division 1 of Part 19H of Schedule 6 of the 1987 Act, notwithstanding weekly award in his favour in these proceedings. Applicant remains within second entitlement period working more than 15 hours per week; entitlement since 1 January 2013 governed by s 37(2) of the 1987 as amended by the 2012 amending Act.

*Mohammadi v Chandler Macleod Group t/as Ready Workforce Pty Ltd* [\[2013\] NSWWC 75](#), 1 March 2013, Arbitrator G Capel

Applicant not an existing recipient of weekly payments of compensation immediately before the commencement of weekly payments amendments as defined by Clause 1, Division 1 of Part 19H of Schedule 6 of the 1987 Act. Clause 9, Division 2 of Part 19H of Schedule 6 of the 1987 Act requires consideration of compensation paid or ordered to be paid prior to 1 January 2013 for purpose of calculating weekly payments from 1 January 2013. Calculation of weekly payments in accordance with s 37(3) of the 1987 Act as amended by the 2012 amending Act. Section 60 medical expenses; expenses incurred prior to 27 June 2012 not caught by amendments to s 60 of the 1987 Act.

*Kostovski v Spotless Property Cleaning Services Pty Ltd* [\[2013\] NSWWC 79](#), 7 March 2013, Arbitrator G Edwards

Calculation of weekly payments from 1 January 2013 in accordance with s 37(1)(a) of the 1987 Act as amended by the 2012 amending Act; applicant not an existing recipient of weekly payments of compensation immediately before the commencement of weekly payments amendments as defined by Clause 1, Division 1 of Part 19H of Schedule 6 of the 1987 Act. Applicant does not fall within meaning of “seriously injured worker” as defined by s 32A of the 1987 Act.

*Raju v Woolworths Limited* [\[2013\] NSWWC 86](#), 13 March 2013, Arbitrator K Haddock

Applicant has no entitlement to weekly benefits after 31 December 2012. Applicant has received weekly benefits for a period in excess of 130 weeks; applicant is not a seriously injured worker; applicant has not returned to work for a period of not less than 15 hours per week; applicant does not satisfy requirements of s 38 of the 1987 Act in order to be entitled to further benefits.

### Recent decisions – lump sum compensation and the 2012 amendments

*Halloran v Rail Corp NSW* [\[2013\] NSWCC 85](#), 12 March 2013, Snr Arbitrator M Snell

Claim for lump sum compensation; proactive offer made by respondent prior to 19 June 2012; information held by respondent at time of proactive offer exceeded information required to constitute relevant particulars for purposes of s 282 of the 1998 Act and Guidelines. Arbitrator satisfied applicant made claim on 11 October 2011, the date the respondent was in possession of its medical report.

Judge Greg Keating  
**President**