



Workers Compensation Commission E-Bulletin

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No. 55

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New Sessional Arbitrator Appointments 2013

I am pleased to advise the appointment of the following new sessional Arbitrators, effective until 30 June 2014:

Acting Judge Linda Ashford
Gerard Egan
Robert Foggo
John Harris
Ross Stanton

Applications to Expedite Proceedings – Future Medical or Related Treatment Disputes

Section 59A(1) of the Workers Compensation Act 1987 limits the payment of compensation for medical and related treatment to 12 months after a claim for compensation in respect of an injury is first made, unless a worker is in receipt of weekly benefits. For claims made before 1 October 2012, where the worker was not in receipt of weekly benefits, the 12 month period commenced on 1 January 2013 (Schedule 8, Part 1, Clause 5 of the *Workers Compensation Regulation* 2010).

Noting that the 12-month period for payment of compensation for medical and related treatment will end for some workers on 31 December 2013, the Commission will consider applications to expedite proceedings in matters affected by this provision. Applications should be made in writing to the Registrar, and copied to the respondent.

Early Issuing of Directions for Production

The Registrar's Interim Guideline in relation to issuing directions for production prior to the teleconference has been extended to 29 November 2013. The guideline allows directions to be issued where there has been failure to oppose the issuing of the direction for production. Parties may apply to the Registrar to determine contested directions as an alternative to waiting for a teleconference.

Changes to Form 2 and Form 1

The Commission has updated the Form 2 Application to Resolve a Dispute and Form 1 Application for Expedited Assessment to include a new section 1.3 relating to legal assistance grants.

The new section is included for informational purposes only. The Commission will progress accepted applications in the same manner regardless of whether there is a grant of legal assistance. The Registrar may reject incomplete applications.

Section 67 Disputes

The Commission has received a number of requests to add a section 67 pain and suffering claim to proceedings in the Commission, where that claim was not made before commencement of proceedings.

The Commission will allow amendment of the proceedings to add the section 67 claim only where the respondent consents and provided the Commission has not yet determined the matter. Evidence of consent from the respondent must be lodged with the amendment request.

If the respondent does not consent to amend the proceedings to include the claim for section 67, the applicant would need to commence new proceedings in the Commission after the claim is made and time has lapsed for the insurer to determine the claim.

Arbitral Appeals

The Court of Appeal has recently issued a decision in *Northern NSW Local Health Network v Heggie [2013] NSWCA255* relating to the appeal provisions in section 352 of the *Workplace Injury Management and Workers Compensation Act 1998*. The Court of Appeal, at [65]-[72], confirmed that an appeal pursuant to section 352 is limited to a determination of whether the decision appealed against was or was not affected by an error of fact, law or discretion and to the correction of any such error.

Practice Direction 6 sets out the Commission's practice and procedure relating to appeals against the decision of an Arbitrator. An *Application to Appeal Against Decision of Arbitrator* (Form 9) must be completed in full and must have attached to it submissions dealing with all threshold and preliminary issues set out in the Practice Direction. Requirements for the *Opposition to Appeal Against Decision of Arbitrator* (Form 9A) are also set out in the Practice Direction.

Amendments to Legal Costs Provisions

Parties are reminded that in proceedings commenced after 2 April 2013, each party is to bear the party's own costs in or in relation to the claim for compensation, in accordance with section 341(1) of the 1998 Act. The Commission no longer has jurisdiction to award costs for matters commenced after that date.

Provision of Reports to Workers – Clause 46 of the 2010 Regulation

Clause 46(3) of the *Workers Compensation Regulation 2010* requires that an employer or insurer "must provide a copy of any relevant report to which the clause applies to the worker", as an attachment to a section 74 notice, except where the report has already been supplied to the worker. The employer or insurer is obligated to provide a copy of any report relevant to the claim, whether or not the report supports the reasons for a decision (cl 46(4)).

Respondents in Commission proceedings should be aware of this requirement and ensure compliance by their insurer clients.