



WORKERS COMPENSATION COMMISSION

E-Bulletin No. 23

November 2006

President's Welcome

Welcome to E-Bulletin No.23 of the Workers Compensation Commission.

On 1 November 2006 the amendments which affect proceedings in the Commission under the [Workers Compensation Act 1987 No 70](#) and [Workplace Injury Management and Workers Compensation Act 1998 No 86](#) (made under the [Workers Compensation Legislation Amendment \(Miscellaneous Provisions\) Act 2005 No 113](#)) commence.

As a consequence, significant changes have been made to the [Workers Compensation Regulation 2003](#), Workers Compensation Commission Rules, [Practice Directions](#), [Forms](#), and [Guidelines](#) to give effect to the legislative amendments.

The purpose of this E-Bulletin is to highlight some of the key changes, and to assist in clarifying their impact on disputes lodged with the Commission for parties and their representatives or agents.

One of the most significant changes once an application to resolve a dispute has been registered by the Commission, is how the dispute will be addressed:

- Disputes in relation to the degree of permanent impairment will be referred by the Registrar directly to an Approved Medical Specialist for assessment of the degree of permanent impairment.
- Only disputes in relation to other claims for compensation, such as weekly benefits or medical expenses, or liability for permanent impairment, will be referred to an Arbitrator to resolve or determine. The teleconference will now be held **35 days** from the date of registration of the application.

The Commission will be running a series of [seminars for legal practitioners](#) in regional and metropolitan NSW throughout November 2006 to provide further information on the changes to practice and procedure in the Commission.

Readers are referred to the [Commission's website](#) for comprehensive information regarding the Workers Compensation Commission.

Justice Terry Sheahan
President

1 November 2006

Forms

The Commission [Forms](#) have been revised, and a number of new forms created to assist parties.

With the exception of forms in relation to arbitral or medical appeals, the Commission will continue to accept applications lodged on the forms in existence prior to 1 November 2006 until 1 December 2006.

Application to Resolve a Dispute

[Form 2 Application to Resolve a Dispute](#) has been revised.

The Commission will only register an application if the following steps have been taken in relation to the claim made on the insurer:

- Where the initial s74 or 54 notice under the *Workplace Injury Management and Workers Compensation Act 1998* has been issued by the insurer on or after 1 November 2006, this notice must be attached to the application. Note the applicant is restricted to lodging a dispute in relation to those matters.
- If the worker has requested an optional review of the insurer decision, an application cannot be lodged until more than 14 days has expired since that request. Any further s74 or 54 decision issued by the insurer must be attached to the application
- Where the dispute concerns the degree of permanent impairment, the exchange of offers under s289(3)(b) of the *Workplace Injury Management and Workers Compensation Act 1998* must be attached
- Where the dispute concerns the degree of permanent impairment, the medical report/s attached must comply with Clause 43 and 43A of the [Workers Compensation Regulation 2003](#)
- Where the insurer has failed to determine the claim within the legislative timeframe, the reference number provided by WorkCover's Claims Assistance Service, and the date of contact with the Claims Assistance Service must be provided for applications lodged after 1 November 2006

Failure to comply with the above requirements will result in the application being rejected.

Material to be lodged with application or reply (Rule 10.3)

Under Section 289A of the 1998 Act a dispute cannot be referred for determination by the Commission unless it concerns only matters previously notified as disputed (refer section 289A of the 1998 Act).

A matter is taken to have been previously notified as disputed if it has been the subject of a claim made on the insurer and an s74 or s54 notice has been issued in relation to the claim, or the insurer has failed to determine the claim in accordance with the legislative requirements.

The Respondent is not required to lodge documents already provided by the Applicant (Rule 10.3(1)).

Reply by Respondent (Rule 10.4)

The Respondent must lodge the reply and serve the reply on the applicant and any other party to the proceedings within 21 days of the date of registration (Rule 10.4).

A Certificate of Service is not required to be lodged by the Respondent.

How the application will be progressed

Proceedings are deemed to be struck out if no reply has been received from the respondent and the applicant has not lodged a certificate of service of application on the respondent (Rule 10.2(7)).

Proceedings, which are struck out, may be restored on application by party and on terms (Rule 10.2(8)).

Where the degree of permanent impairment is in dispute, the matter will be referred by the Registrar to an Approved Medical Specialist for assessment of the degree of permanent impairment. (Rule 10.2 (3) (b)) and [Practice Direction 11](#)

Where the application concerns a claim for compensation such as weekly benefits, payment of medical expenses, or liability for permanent impairment, it will be referred to an Arbitrator and progressed in accordance with the [Practice of the Conciliation/Arbitration Process in the Workers Compensation Commission](#). The teleconference will be held 35 days from the date of registration of the application.

Rule Changes

From 1 November 2006 the *Workers Compensation Commission Rules 2006* will commence. A summary of changes to the Rules is contained in [Workers Compensation Commission Rules 2006 – Summary of changes](#). Outlined below are some of the key changes.

Repeal and Transitional Provisions

The [Workers Compensation Commission Rules 2003](#) are repealed (Rule 1.3).

For matters registered prior to 1 November 2006 the timetable issued remains in effect until the completion of the matter, unless the Commission or the Registrar directs otherwise (Rule 1.3(6)).

Amendment of Documents

The provisions in relation to amendment of documents have been altered to comply with the legislative requirements (Rule 4.2(1)-(8)).

Notices for Production

Part 12 of the *Workers Compensation Commission Rules 2006* provides for the obtaining of documents by, and between, parties to proceedings, including the

insurer of an employer, following registration of an application, where parties have not been able to obtain documents held by another party prior to lodgment of an application.

Directions for Production

The Rules in relation to Directions for Production are substantially changed – refer Part 13 of the *Workers Compensation Commission Rules 2006* and [Practice Direction No. 7](#) Directions to Produce Documents.

Applications for Directions for Production to be issued are to be made at the teleconference, and will be issued only by leave of the Arbitrator.

Directions for Production are only able to be issued to third parties, and are not able to be issued in relation to documents held by parties to the dispute.

The procedure for seeking leave to admit documents produced under direction by leave is outlined in Rules 10.3 (4) & (5))

Expert Witness

The provisions of Rule 14.2 apply in respect of an expert witness (Rule 14.3(1)).

Expert evidence that does not comply with any [Practice Direction No.3 Expert Evidence](#) is not admissible in proceedings unless the Commission otherwise orders (Rule 14.3(3)).

Dismissal for want of due despatch

Failure by an applicant to prosecute the proceedings with due despatch is a ground of dismissal for the purposes of section 354(7A)(c) of the 1998 Act (Rule 15.8).

Electronic Case Management

From 1 November the *Workers Compensation Commission Rules 2006* will allow for electronic lodgment of documents (Refer Part 5).

Persons under Legal Incapacity

Part 6 of the *Workers Compensation Commission Rules 2006* provides for the Commission to appoint any person it thinks fit to represent a party who appears to the Commission to be a person under legal incapacity (Rule 6.2 (1)).

Changes to Appeal Procedures

Appeal Against Determination of Costs by Registrar

The provision for appealing a cost determination of the Registrar has been removed under the amendments to the *Workers Compensation Regulation 2003*.

Appeal Against Arbitrator's Decision

Rule 16.2 incorporates the provisions of [Practice Direction No. 6](#) Appeal Against a Decision of the Commission constituted by an Arbitrator.

Both the Appellant and Respondent must certify reasonable prospects of success in the application form.

Failure to certify reasonable prospects of success will result in the application being rejected.

Appeal Against a Medical Assessment Certificate

Parties wishing to lodge an appeal against a decision of an Approved Medical Specialist must comply with the *WorkCover Medical Assessment Guideline*. The *Registrar's Guideline on Medical Appeals* provides more procedural information.

Both the Appellant and Respondent must certify reasonable prospects of success in the application form.

Failure to certify reasonable prospects of success will result in the application being rejected.

Expedited Assessments

The provisions for expedited assessment have been amended to include applications for weekly payments for closed past periods up to 12 weeks as well as Interim Payment Directions (refer [Practice Direction 10](#) and [WorkCover Interim Payment Direction Guideline](#))

Contact the Commission

For information or assistance please contact the Workers Compensation Commission between 8.30am and 4.30pm Monday to Friday

Telephone: 1300 368 040

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

Facsimile: 1300 368 018

In person at: The Registry, Level 19, 1 Oxford Street, Darlinghurst NSW 2010

Postal Address: PO Box 594, Darlinghurst NSW 1300 or

Document Exchange: DX11524, Sydney Downtown

Electronic lodgment: registry@wcc.nsw.gov.au

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