



WORKERS COMPENSATION COMMISSION

E-Bulletin No. 16

October 2004

President's Welcome

Welcome to E-Bulletin No. 16 of the Workers Compensation Commission.

This E-Bulletin outlines changes to Practice Direction No.6 *Appeal Against A Decision of the Commission Constituted By An Arbitrator* effective on and from 1 November 2004.

Practice Direction No.6 sets out the practice and procedure to be adopted by the Commission in relation to appeals against decisions of Arbitrators and is intended to assist the parties when making, and responding to, appeal applications.

The changes made are largely procedural and aim to highlight practical differences in the way the Commission deals with appeals against interlocutory decisions and appeals against final decisions of Arbitrators.

Also outlined in this E-Bulletin are:

- Changes to the scheduling of Commission proceedings to provide parties with more notice of the teleconference proceedings, and enable parties to agree on the date/time for the conciliation/arbitration hearing, should this be necessary following the teleconference
- Changes to the Registrar's Guideline for Standards of Conduct During Proceedings
- The new search engine for Commission decisions and Compensation Court decisions on the website
- Comment in relation to how conduct money applications are dealt with by the Registrar

Justice Terry Sheahan
President
October 2004

Revised - Practice Direction No. 6
Appeal Against a Decision of the Commission Constituted by an Arbitrator

The revised Practice Direction will be effective on and from 1 November 2004. The revised Practice Direction and the forms referred to below will be published on the website www.wcc.nsw.gov.au at this time.

The main changes to the current practice and procedure are summarized below:

Changes to the Application form

The existing Form 9 '*Application – Appeal Against Decision of Arbitrator*' has been amended to clarify the information provided by the Appellant.

The Application form also contains procedural information for Respondents in relation to an Appeal against the final decision of an Arbitrator, and an Appeal against an Interlocutory Decision.

Form for Respondent Reply

A form for the Respondent to reply to an Appeal Application is introduced. The new form is titled '*Opposition – Notice of Opposition to Appeal Against Decision of Arbitrator* (Form 9A).

Rejection of Applications

The current provisions, which enable Appellant's to rectify areas of non-compliance with the Practice Direction in their Application prior to the Application being rejected, are removed.

From 1 November 2004 any Application filed which does not provide the information or documentation required by the Practice Direction will be rejected.

Interlocutory vs. Final Decision Appeal Process

The Practice Direction provides for a separate procedure for appeals against an interlocutory, as opposed to a final decision of an Arbitrator. The aim is to ensure that these appeals are dealt with in an expeditious manner, enabling substantive proceedings to be progressed.

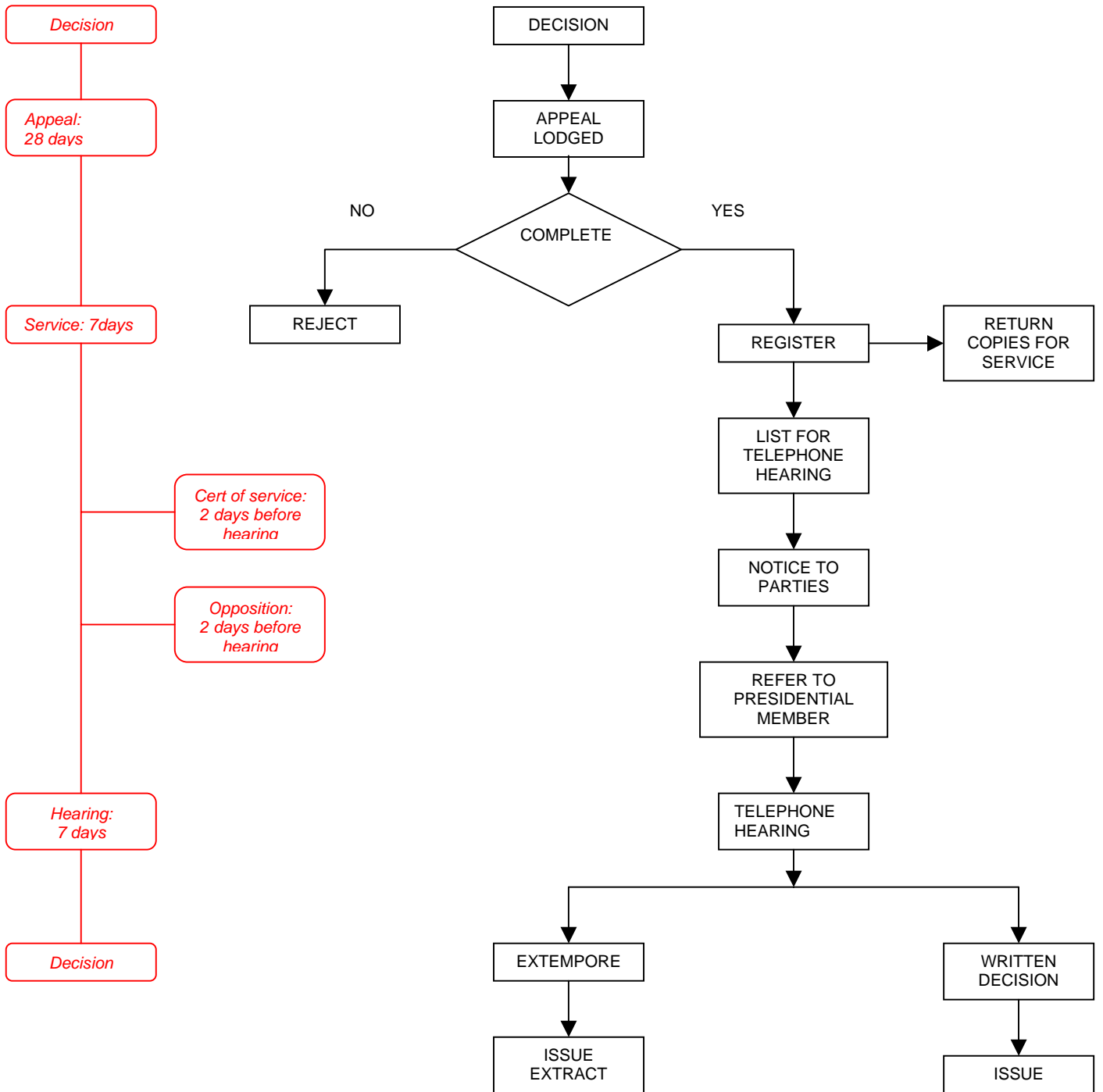
Appeals against interlocutory decisions on liability, injury or worker will not be reviewed until the final determination of the substantive proceedings.

Where an appeal against an interlocutory decision of an Arbitrator is accepted for filing, the Application and copies will be sealed and returned to the filing party, along with a telephone hearing notice for service by the filing party on the other parties to the dispute. The telephone hearing will be scheduled to occur at least 14 days after the date of registration of the Appeal, however will not proceed unless the appealing party has lodged a Certificate of Service certifying service of the Application and telephone hearing notice on the other parties to the appeal, at least 2 days prior to the date of the telephone hearing.

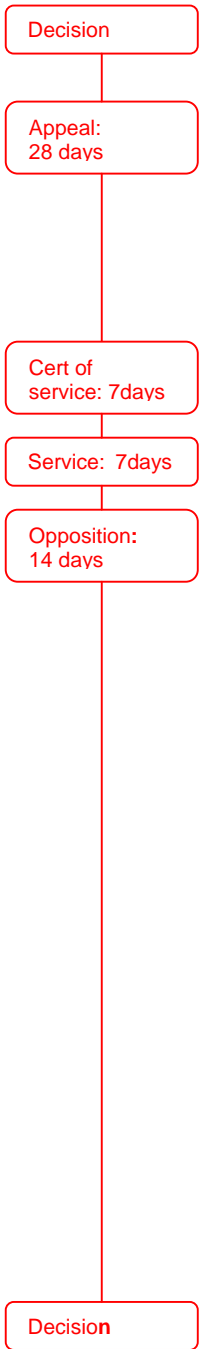
The procedure for appeals in relation to interlocutory and final decisions is set out below.

TIME LINE

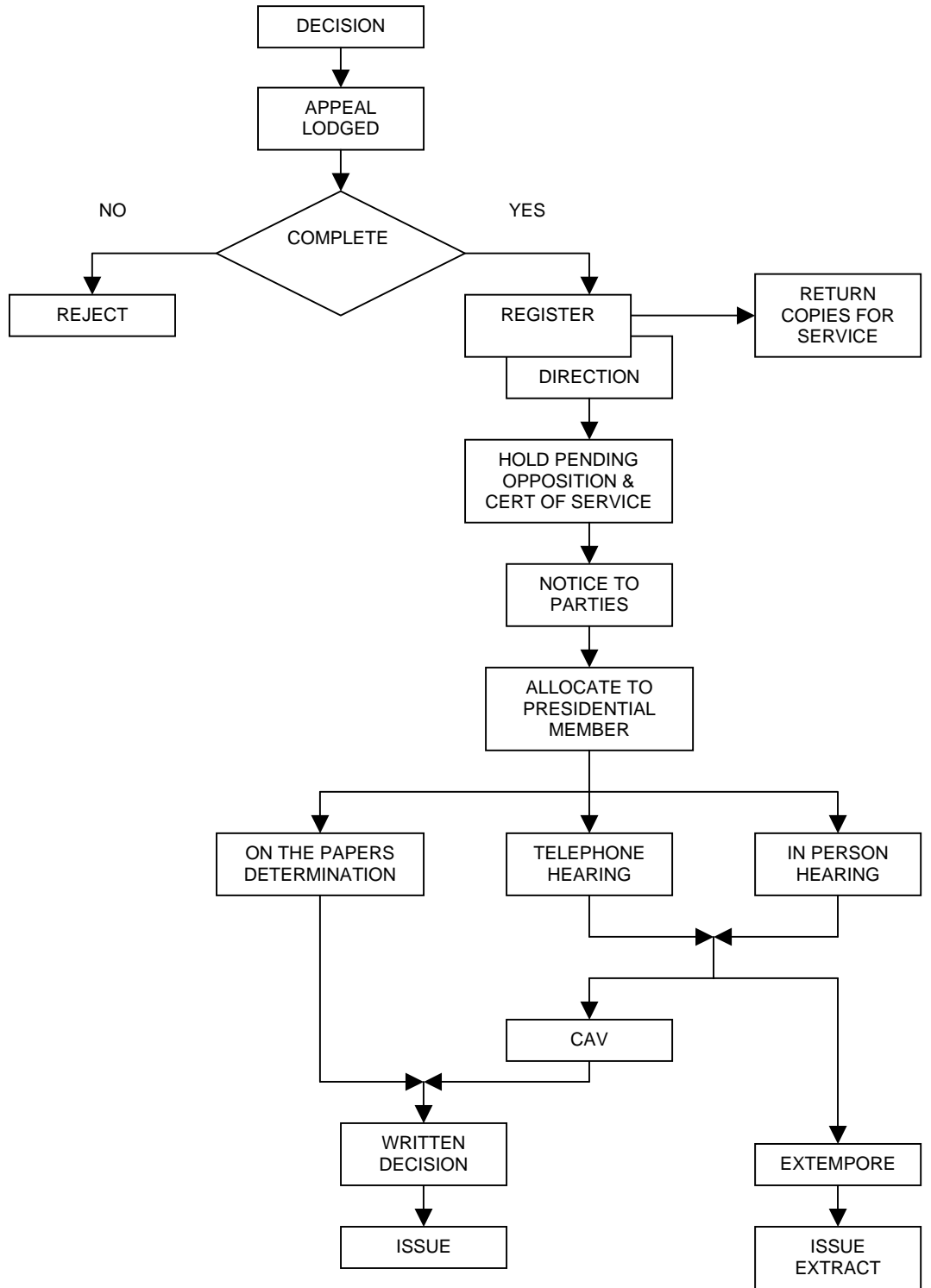
INTERLOCUTORY DECISION APPEAL PROCESS



TIME LINE



FINAL DECISION APPEAL PROCESS



Requirements re Authorities

The requirements in relation to authorities cited have been amended, to provide that only a list of authorities referred to and specifically relied upon in submissions is required, unless the decision is unreported, in which case a copy of the decision is to be provided.

Scheduling of Commission Proceedings

Timetable of Proceedings

From 27 October 2004, the timetable of proceedings issued to parties at the registration of the Application to Resolve a Dispute will advise of the date for the teleconference. Within five weeks of registration, the Commission staff will confirm the date and advise the time of the teleconference to all parties. This will effectively give parties up to 9 weeks notice of the teleconference.

Scheduling of Conciliation/Arbitration Hearings

Commission staff will no longer schedule the conciliation/arbitration hearing prior to the teleconference being held with an Arbitrator.

This change has been made due to requests from stakeholders for greater involvement in scheduling Commission proceedings to avoid timetable clashes, and as a result of the high settlement rate at teleconferences requiring the cancellation of conciliation/arbitration proceedings.

If a conciliation/arbitration conference is required following the teleconference, the Arbitrator will be responsible for negotiating and agreeing on a date with the parties at the teleconference. The date of the conciliation/arbitration hearing must be held within 21 days of the teleconference.

Revised - Registrar's Guideline for Standards of Conduct During Proceedings

The Registrar's Guideline for Standards of Conduct During Proceedings has been revised to clarify the requirements for parties and their representatives attending Commission proceedings, with particular emphasis on assisting persons with disabilities, and ensuring ethical and non-discriminatory behavior. The Guideline is available from the Commission's website

http://www.wcc.nsw.gov.au/pdfs/conduct_standards.pdf

Improved Searching on the Commission's website

Searching Decisions, Practice Directions, *Workers Compensation Commission Rules* 2003 and other PDF documents on the Commission website (www.wcc.nsw.gov.au) has become easier with the recent installation of additional software which can search online PDF documents more accurately.

The new search engine is more precise and returns search results in order of hits and occurrences. Importantly, the new search engine also highlights searched word/s

within the PDF documents it retrieves, allowing for faster browsing of documents. We encourage your feedback about regarding this updated PDF search capacity via our website.

Conduct Money

Rule 58(1) provides that a producer is entitled to an amount sufficient to meet the reasonable expenses of complying with a direction for production. Rule 58(2) further provides that, in the case of production by a non-party, the Registrar may order an additional amount be paid where expenses or loss incurred substantially exceeds the amount paid or tendered.

Item 4.03B of the Compensation Costs Table to Schedule 6 of the *Workers Compensation Regulation 2003* limits recovery of conduct money to \$40.00 per person served with a direction for production.

There is obvious inconsistency between Rule 58 and Item 4.03B. This has been the subject of representations to Mr M J Clarke QC in his recent review of workers compensation costs.

The Registrar or delegate is obliged to apply the Rules and Regulation, as they currently exist. As a guide and having regard to the costs schedule, the Registrar or delegate deems \$40.00 to be an appropriate amount per 100 pages produced; such amount being adjusted according to the particular facts and circumstances in each case.

Contact the Commission

For information, assistance or a request for dispute resolution, please contact the Workers Compensation Commission between 8.30am and 5.00pm Monday to Friday:

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| By telephone: | 1300 368 040 |
| TTY (for people with hearing impairments): | (02) 9261 3334 |
| By facsimile: | (02) 1300 368 018 |
| In person at: | The Registry, Level 19, 1 Oxford Street, Darlinghurst NSW 2010 |
| Postal Address: | PO Box 594, Darlinghurst NSW 1300 |
| Document Exchange: | DX 11524, Sydney Downtown |
| Email: | registry@wcc.nsw.gov.au |
| Further information and forms are available at: | www.wcc.nsw.gov.au |