



WORKERS COMPENSATION COMMISSION

E-Bulletin No. 17

February 2005

President's Welcome

Welcome to E-Bulletin No. 17 of the Workers Compensation Commission.

This E-Bulletin outlines:

- Effect of amendment to s376 of 1998 Act
- Late production of material under Direction
- Material to be lodged with the application
- WorkCover Benefits Guide October 2004

Justice Terry Sheahan
President

Effect of amendment to s376 of *Workplace Injury Management and Workers Compensation Act 1998*

The recent amendment to section 376 of the *Workplace Injury Management and Workers Compensation Act 1998* now puts beyond doubt the requirement in the *WorkCover Guides to the Evaluation of Whole Person Impairment* that “assessors of permanent impairment are to be medical practitioners with qualifications in the relevant medical specialty who have undertaken the requisite training in the use of the WorkCover Guides”.

The amendment to section 376 addresses issues raised by the recent Supreme Court decision of *Thomson v WorkCover* [2004] NSWSC 282 and makes it clear that guidelines issued by WorkCover may specify professional or other requirements for medical practitioners to be permitted to assess the degree of permanent impairment of injured workers for the purposes of the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998*.

The relevant legislative amendment is the new section 376(1)(a1) which was inserted into the 1998 Act by Schedule 5[6] of the *Workers Compensation and Other Legislation Amendment Act 2004 (No.111)*.

Section 376(1)(a1) allows WorkCover to issue guidelines with respect to:

“the professional or other requirements (including qualifications, training or membership of professional bodies) for a medical practitioner to be permitted to assess (or carry out any related function), for the purposes of the Workers

Compensation Acts, the degree of permanent impairment of an injured worker as a result of an injury.”

Section 376(1)(a1) commenced on assent on 15 December 2004, although amendments to the transitional provisions contained in the *Workers Compensation Act 1987* (see new clause 3 of Part 81I to Schedule 6) ensure that section 376(1)(a1) applies to guidelines issued before the commencement of that section.

Disputes have been lodged with the Workers Compensation Commission that involve an insurer's refusal to accept a section 66 claim because the relevant particulars have not included a properly completed report, in accordance with the WorkCover Guides, by a properly qualified and trained assessor.

The passage of the amending legislation means that the insurer's decision to refuse to accept relevant claims will have a statutory basis.

The awarding of costs may be considered in these “disputes”, particularly if the relevant claim was lodged after the date of assent of the legislative amendment.

Late Production of Material under Direction

The provisions of the *Workers Compensation Commission Rules 2003* in relation to the production of material under Direction (Part 10) place the onus on the party requesting the material to ensure that it is provided by the producer, in accordance with the Direction.

In the event that the producer has not complied with the Direction, and the requesting party still wishes to obtain the material, the Rules place the onus on the requesting party to take action under Clause 53 of the Rules, which may include requesting the terms of the direction be altered (c53(1)(b)(i)), or that the time for compliance with the direction be extended (c53(1)(b)(ii)).

Any such request is required to be made within 2 working days after the date of production. Where no such request is made, (or if made, is not granted), the material produced subsequent to the Direction will be returned to the producer in accordance with the Rules.

Material to be lodged with an application

Applicant solicitors are reminded that if they intend to lodge a worker's statement, this is to be filed with the Application to Resolve a Dispute in accordance with the provisions of section 290 of the *Workplace Injury Management and Workers Compensation Act 1988*, and Rule 38(1) of the *Workers Compensation Commission Rules 2003*.

WorkCover Benefits Guide October 2004

The WorkCover Benefits Guide updated in October 2004 is available via a link from the Commission's website or directly from the WorkCover NSW website via: <http://www.workcover.nsw.gov.au/WorkersCompensation/WorkplaceInjuries/Benefits/default.htm>

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:

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