

New Work Health Rules

Legislative Changes

There has been an amendment to the Work Health Act commencing on 1 August 1999 to coincide with the commencement of the new Work Health Rules.

Background

The Work Health Authority commissioned an investigation and assessment of the processes under the Work Health Act by Transformation Management Services. That organisation analysed data provided to them from the government system and interviewed the main stakeholders in the process. A report was presented to the government in 1997. The Work Health Authority has wholly embraced the recommendations given in that report and the result is the changes to the legislation and the court rules the main details of which are discussed in this paper.

Philosophy

The philosophy behind the changes is to encourage earlier resolution of matters by early exchange of information and communication between the parties. The rules have been drafted to reflect that philosophy and to be as consistent with the Local Court Rules as possible. Although there is still a reference in the new rules to the Supreme Court Rules, they have been written to stand alone and the need to refer to the Supreme Court Rules will be a less common occurrence.

Managing Magistrate

The role of the appointed managing magistrate Mr D Trigg SM, has not yet been defined. Generally however, the managing magistrate will have the control of case-flow management and will be responsible for the assignment of files to magistrates.

Mediation

Mediation of a claim is now a compulsory pre-condition to the commencement of an action by a worker in the Court (section 103J). A worker cannot commence a proceeding until there has been both a mediation and a mediation certificate is-

sued. Once the mediation has been held then the worker has 28 days from the receipt of the certificate of mediation to commence proceedings. Court staff will not accept an application to the court for benefits unless the mediation certificate is sighted.

Parties to a mediation are defined in the Act as including the worker, the employer and the insurer.

Commencement of proceedings

An applicant can commence a proceeding in the Court by filing and serving an "Application" (form 5A-attached). That document does not constitute a pleading and is intended to set out the bare bones of the applicant's claim. The application and supporting documents referred to below must be served as soon as practicable - rule (5.05). There has been no time limit placed on service to take into account the difficulties an applicant may have serving a respondent eg in remote communities or interstate.

A major change is the requirement on parties when filing either an application for compensation or an appearance to further file copies of the following documents (as applicable)- all hospital reports (not records) and medical reports in the worker's possession whether or not they support his/her claim, the claim form and medical certificates referred to in s82, the mediation certificate and any decisions made under section 85 & 86 of the Act or notices under s 69 (rule 5.02 (2)).

Appearance

The respondent must file and serve an "Appearance" within 14 days of service of the application. The respondent must also file any medical evidence it has in its possession (rule 5.06 (2)).

Default judgment

It is now possible for an applicant to apply for default judgment if an Appearance is not entered within 14 days. The application must be by way of interlocutory summons and supported with an affidavit setting out the amount claimed with particulars and details of calculation (rule 21.03(3)

and annexing medical reports etc to support the amounts (rule 21.03 (4)). The application is specifically allowable as an ex parte application (see rule 21.03 (2))

Interim Benefits

The Act now limits the Workers rights to interim benefits to 10 weeks prior to the determination and 12 weeks subsequent to the order. (section 107). It is still open to the Court to make more than one determination if the Court is satisfied that a party will suffer hardship if not granted or the circumstances are otherwise exceptional. The rules allow for interim benefits determinations to be made in the directions conference however the Court will require these matters to be dealt with by way of interlocutory application as it has been done in the past. There is no provision for appealing a decision with respect to the payment of interim benefits.

Directions Conference

Assuming an appearance is filed, a Directions Conference will be set for 14 days after the filing of the Appearance or as soon as practicable after that date. This conference will be given a 30 minute timeslot and will be presided over by a Judicial Registrar or a Magistrate. At that meeting there will be an attempt to resolve the issues between the parties or at least to define the issues in dispute between the parties. If the presiding officer thinks that the matter could be sorted out in a full conciliation, then the matter will be referred to a conciliation conference and will be given the amount of time necessary to fully explore all areas of possible settlement. If it is clear that the matter is not capable of resolution by conciliation, then the presiding officer will make directions in regards to the filing and service of pleadings, discovery etc.

The persons required to be present at a directions conference are set out in Rule 7.03 and include a representative of the employer's Insurer. Those persons attending must have full knowledge of the circumstances, be prepared to discuss fully the issues and be authorised to settle the matter if possible. Once again, prior to or

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at a directions conference, there is an ongoing obligation on parties to file copies of any medical or hospital reports not previously filed. Rule 7.02(2) states that these reports are to be filed or delivered in a sealed envelope bearing the title of the proceeding and the name of the party filing the report. A similar rule applies to conciliation conferences.

Conciliation conference

As mentioned before these will only be ordered if the presiding officer is of the opinion that the matter could be furthered by a full conciliation conference or if the parties request a conciliation conference be set. The persons who must attend and their authority are the same as in a Directions Conference.

Prehearing conference

After all interlocutory steps are taken, the court will set a date for a Prehearing conference. Unless otherwise ordered, the parties must attend this meeting in person and meet all the requirements re authorisation to settle etc which apply to directions hearings and conciliation conferences. This is the last meeting before the matter heard. Further directions may be made re Video conferencing of witnesses etc and the matter will be set down for a hearing.

Case management Statement

There is now a requirement for the filing and serving of a case management statement 2 days before the prehearing conference. A matter will not be set down if there is no case management statement filed.

Assignment to a magistrate

The Managing Magistrate may decide that a matter should be assigned to a magistrate at any stage of the proceedings (rule 1.11). If a matter is assigned, then the magistrate in question will take on the supervision of the file including all interlocutory steps and including directions hearings and prehearing conferences.

Discovery and Interrogatories

These steps are dealt with in Part 12 and Part 13. There is now a requirement for

continuing discovery (rule 12.04) and the cost of producing photocopies after inspection is to be charged at the rate allowed under the Supreme Court rules (eg the time spent by a clerk photocopying them) or at 50 cents per page.

Interrogatories are allowed by consent in writing or by leave of the court.

Pleadings

Pleadings such as the Statement of Claim, Defence, Counterclaim and Reply will not be required until after the directions hearing. The aim is to ensure that all parties are fully aware of what the issues are (through mediation and the exchange of information) without being bogged down in technical arguments about pleadings.

Rule 9.05 allows the Employer to counterclaim in the Worker's case so that there will be no need for the Employer to issue separate proceedings and then have them consolidated.

There are the usual requirements as to what should be included in a pleading (see Part 8).

Default Judgment and Summary Judgment (Part 21)

The procedure for default and summary judgment is now set out in the rules. The procedure also allows for an assessment of compensation upon judgment being entered. That assessment must be decided by a magistrate (rule 21.05)

Orders

Once the court makes final orders then it is up to the parties to ensure an order is taken out (as is done in the Supreme court). Part 22 sets out the procedure for a final order to be produced. There is a prescribed form which the party ordered to do so must produce and serve on the other side for their approval. If a draft is agreed upon, then both parties should endorse the draft and file a copy in the court. The Registrar will then settle the order and send a settled order back to the person who filed it. A final order (and sufficient numbers of service copies) will then be filed in court and the Registrar will seal those copies and send a copy to each party.

If there can be no agreement to the form of the order then the Registrar can set the matter down for a further hearing regard-

ing the terms of the final order (rule 22.02 (3)).

Costs (Part 23) Order 63 of the Supreme Court Rules and the Appendix apply subject to some changes made in the Work Health rules.

The differences are:

The Court must set a percentage of the scale to be applied in each case. The costs of conciliation conferences will be that of a contested interlocutory application. Interlocutory costs shall not be taxed until the final disposition of the matter. The form of the Bill of costs has been simplified. There are to be three sections, preparation, attendance at hearing and taxation. The items are to be listed in chronological order and there will be no allowance for special care and conduct.

Review of a taxing officer's order

The application for a review will be heard by the assigned magistrate and if the assigned magistrate is not available, then by another magistrate.

Appeals from Judicial Registrar's Decision

The legislation now makes it clear that there is a right of appeal from a decision of a Judicial Registrar to a Magistrate- see 114A. The appeal is de novo. There is no appeal to a magistrate in relation to any orders made for the making, variation, or revocation of an interim benefits order.

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**The New Work
Health Rules are
available from:**

**The State Reference
Library**

**The Government
Printer**

**Internet (under NT
Legislation)**