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Workers Compensation independent review office

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UPDATES
INFORMATION
TRENDS

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CASE REVIEWS (Recent cases)

The case reviews are not intended to substitute the headnotes or ratios of the cases. You are strongly encouraged to read the full decisions. Some decisions are linked to AustLii, where available.

[New issues raised on appeal; no error of fact or law]

***Taylor v J & D Stephens Pty Ltd* [2017] NSWWCCPD 50**

(WCC: Wood DP - Date of Decision: 14 November 2017)

The worker made a claim for permanent impairment lump sum compensation arising from "nature and conditions" of his employment as a shearer, or alternatively as a disease or aggravation thereof pursuant to s 4(b)(i) and s 4(b)(ii) of the 1987 Act.

Upon consideration of the factual and medical evidence before her, the arbitrator determined that a causal connection between the worker's conditions of employment as a shearer and his injury could not be established, and that the worker failed to discharge the burden of proof on the balance of probabilities that he sustained injury.

The worker appealed on the ground of error of law because: (1) the arbitrator misdirected herself as to whether there needed to be a complaint of symptoms for the worker to establish he had suffered injury; (2) the arbitrator should have found in favour of the worker, having determined that he suffered from a disease contracted in the course of his work as a shearer; and (3) the arbitrator misapplied the authorities relevant to the determinations that needed to be made. The employer argued that it was open to the arbitrator to make the findings.

Deputy President Wood rejected the worker's submissions, holding that the worker "makes no challenge to the factual findings with respect to the evidence before the Commission or the Arbitrator's rejection of the [relevant medical evidence]" (at [66]).

It was found that the worker did not make submissions on why leave should be granted to raise an argument not argued before the arbitrator, and could not identify any exceptional circumstances in order to grant leave (at [74]-[76]). Citing ***Brambles Industries Limited v Bell*** **[2010] NSWCA 162** (at [76]),Wood, DP could not find an error in the arbitrator's decision on this basis, and found the argument lacked merit such that she declined to allow the issue to be raised on appeal (at [78]).

Wood DP further stated:

> "The finding of the Arbitrator that she was not satisfied on the evidence of an occurrence of injury has not been raised as an appeal point. Ground one of the appeal is limited to what legal test the Arbitrator was required to apply in determining Mr Taylor's entitlements." [at 95]

The worker's second ground of appeal also failed because he relied on his own incorrect construction of the arbitrator's reasons. The Deputy President rejected the worker's assertion that the arbitrator erred in finding he suffered a disease injury, when the arbitrator did not make such a finding, stating that "the ground does not raise a new ground of error of fact, law or discretion but simply states the relief sought on the assumption that Mr Taylor's construction … of the decision is accepted" (at [97]).

Wood DP also rejected the worker's third ground of appeal, acknowledging the correctness of the arbitrator's consideration of the relevant authorities that enunciated the principles she had taken into account in making her determinations. The Deputy President stated that "each of the above analyses of the authorities was relevant to the task before the Arbitrator and the Arbitrator did not err in applying those principles" (at 108]).

The appeal was dismissed and the arbitrator's determinations were confirmed.

["In the course of employment"; "injury arising out of employment"; "substantial contributing factor"]

***Ryan v Regional Imaging Pty Ltd* [2017] NSWWCCPD 48**

(WCC: Keating P - Date of Decision: 10 November 2017)

The worker injured her right leg and left elbow when she was "struck by a car as a pedestrian, at work, after dropping off mail at the Albury Post Office", shortly following her normal shift as a receptionist. The insurer denied liability for the claim for weekly payments and medical treatment expenses, on the basis that there was no real or substantial connection between the worker's employment and the incident. In the alternative, the insurer submitted (1) the worker was not in the course of her employment and (2) the employment was not the substantial contributing factor to her injury.

The arbitrator found in favour of the employer and determined that the worker's injury did not arise out of or in the course of her employment (s 4(a) of the 1987 Act), that the employment was not a substantial contributing factor to the injury (s 9A of the 1987 Act), and that the journey provisions did not apply in the circumstances of the injury (s 10 of the 1987 Act.

The worker appealed on the grounds that the arbitrator erred in applying the various tests to determine the issues pursuant to the above provisions in the 1987 Act and for failure to take into account the factual circumstances giving rise to the injury.

The President found that the arbitrator erred in relation to the following principles:

"In the course of employment"

- Following the authorities on the issue, in considering what is "incidental to service" or work, the sufficiency of the connection between the worker's employment and what she was doing at the time she was injured could only be "a matter of degree in which time, place, practice and circumstances as well as the conditions of employment had to be considered" (at [53], citing ***Hatzimanolis v AMI Corporation Ltd* (1992) HCA 21** and ***Whittingham v Commissioner of Railways (WA)* (1931) HCA 49**).

- The worker remained in the course of her employment while walking between her car and the Post Office because she was doing something incidental to her employment (at [57]).

- The arbitrator failed to consider the terms of the worker's employment and what was reasonably required, expected or authorised by the employer in order for her to carry out her actual duties of travelling to the Post Office and attend to the posting of the employer's mail. Rather, the arbitrator treated the time of the accident and immediate cause of it as decisive factors in his determination, which was an error (at [54] and [58]).

- The worker was at the place of the injury for no reason other than to attend to her work duties of posting the employer's mail, and was therefore induced, encouraged and authorised by the employer to be at that particular place by reasonably expressed terms of her employment (at [64]).

"Injury arising out of employment"

- The arbitrator failed to explain his reasoning for the conclusion that the circumstances of the worker's employment duties and those that led to the injury did not give rise to a material contribution to the injury (at [81]). The President found:

> "The requirement of Ms Ryan's employment caused her to be in the Albury CBD, on foot and negotiating traffic when she was injured. The clear causal link to the employment was the requirement for her to use her own car to travel from the respondent's premises to the Albury CBD, park it and then walk to and from the Post Office to attend to the task of posting the mail. That was a factor that materially contributed to the injury and was sufficient to satisfy the requirements under s 4 of the 1987 Act, in that the injury arose out of the employment."[at 84]

"Substantial contributing factor"

- The arbitrator was in error in focusing only on the final aspects of the worker's duties of the day when the injury occurred (that she was performing duties at or immediately prior to the injury). The arbitrator should have focused on the nature of the work performed in considering whether or not s 9A(2)(b) applied, not just the fact that the worker had completed her work duties for the day at the time of the injury (at [100]).

- The arbitrator erred in concluding that s 9A(2)(d) was not relevant. The President stated that "it is highly unlikely that a similar injury would have happened at the same time or at the same stage of Ms Ryan's life had it not been for the particular tasks of her employment" (at [101]). The worker's employment was a substantial contributing factor to her injury.

Having made affirmative findings on the above tests, the President deemed it unnecessary to consider the application of the journey provisions in s 10 of the 1987 Act.

The arbitrator's determinations were revoked and orders were made in lieu for weekly payments and medical treatment expenses.

[Indexation of PIAWE; s 82A of the 1987 Act; Can indexation be retrospective?]

***Thompson v ATN Channel 7* [2017] NSWWCC 269**

(WCC: Arbitrator Harris - Date of Decision: 16 November 2017)

In ***Thompson v ATN Channel 7* [2017] NSWWCC 253**, the arbitrator determined that the worker suffered injury in March 2000, that proposed surgery was reasonably necessary, and that the worker had no current work capacity within the meaning of s 32A of the 1987 Act from 15 May 2017 to date and continuing.

In the current matter, the worker submitted that s 82A of the 1987 Act provided for the indexation of the PIAWE on each review date as defined in s 82A(2), being 1 April and 1 October of each year but that the calculation, as per the review dates, should be retrospectively made to the date at which he became entitled to weekly payments, being on 18 March 2000. The worker relied on the reasoning in ***Edwards v Southern IMP Pathology* [2015] NSWWCC 1** (*Edwards*), which determined that the PIAWE "can be indexed on the review dates in any year prior to 2013". He also submitted that s 82A did not provide a commencement year for the review date and that the figures could be reviewed at any time on 1 April and 1 October of any year.

The respondent argued that: (1) the decision on the indexation of PIAWE in *Edwards* was incorrectly decided in that s 82A is not retrospective; (2) that PIAWE under s 44C of the 1987 Act has been used to determine the weekly payments entitlements since 1 October 2012; (3) that indexation cannot occur prior to first review date after the operation of the 2012 amendments on 1 April 2013; (4) that s 82A does not apply to indexation of any other figure; and, (5) that the benefits guide does not provide any values for the calculation factor for any date prior to 1 April 2013.

The arbitrator rejected the worker's submissions and opined that s 82A "is operational from 1 October 2012. It was passed as part of a scheme of amendments for entitlements to weekly payments of compensation", which included the entitlements in the first and second entitlement periods under ss 36 and 37, which are also operational from 1 October 2012 (at [18]).

In disagreeing with the decision in *Edwards*, the arbitrator cited that the situation in that matter was that the legislation was "beneficial legislation", which was contrary to the decisions in ***ADCO Constructions Pty Ltd v Goudappel* [2014] HCA 18** and ***Cram Fluid Power Pty Ltd v Green* [2015] NSWCA 250**. The arbitrator stated that, in addition to the authorities, the 2012 amendments had limited the entitlement to weekly payments, indicating a contrary position in *Edwards* in that "these changes to weekly payments introduced by the 2012 amendment Act were, in some respects, not beneficial to workers" (at [28]).

The arbitrator determined that s 82A does not have retrospective operation and does not purport to operate on entitlements existing prior to the date of its commencement on 1 October 2012. The indexation of the worker's PIAWE therefore does not apply from 2000, but from the first review date on 1 April 2013.

[Paucity of evidence; proceedings dismissed for want of due dispatch]

Huntingdon v Carrier Australia Pty Ltd [2017] NSWWCC 265

(WCC: Arbitrator Capel - Date of Decision: 13 November 2017)

The worker's disputed claim for weekly payments and medical treatment expenses was brought before the Commission for determination. Upon an audit of the evidence contained in the application at the teleconference, the arbitrator was not satisfied that the matter was ready to proceed for varied reasons, as follows:

- The worker's solicitor was unable to clarify the worker's work history following the injury;
- The precise period of the claim could not be determined even after inquiries to the worker at the teleconference;
- Quantification of the worker's entitlements could not be determined because there was insufficient wage material available;
- The evidence in relation to medical treatment expenses was deficient because there were no accounts to justify the figures in the schedule of the medical expenses being claimed;
- The worker's statement largely consisted of a chronology or summary of the medical reports already in evidence, and did not properly address the issues disclosed in the dispute notice;
- The medical evidence relied on for weekly payments benefits was outdated, particularly where the last medical certificate covered only the period until 26 May 2017 and there was nothing to cover the period on an on-going basis;
- The medical evidence relied on for medical treatment was insufficient, where there was no report provided in evidence from either of the doctors who proposed the treatments.

When the arbitrator indicated to the worker's solicitor that the matter was not ready to proceed on the basis of the above observations, with a suggestion to seek instructions from the worker to discontinue the matter, the worker's solicitor disagreed and insisted that the matter be listed for a Conciliation Conference/Arbitration Hearing (Con/Arb). The solicitor also argued that the arbitrator recuse himself from hearing the proceeding because the worker had formed the view that the arbitrator had already determined the matter as unsuccessful.

The arbitrator ultimately declined to list the matter for a Con/Arb, stating that "[t]he state of the evidence is poor and does not properly address the matters in dispute" (at [26]). Citing the objective of the Commission to provide a timely, fair and cost effective system for the resolution of disputes, and the Commission's e-Bulletin in November 2013 about "unprepared matters", the arbitrator opined that "there is little or no prospect of the matter being advanced within a reasonable time in accordance with the normal practice in the Commission. Any further delay would be prejudicial to the respondent and it would incur unnecessary costs" (at [31]).

On the challenge of recusing himself from the proceeding, the arbitrator stated, at [33]:

> "In my view, the comments made by me during the telephone conference, which highlighted the deficiencies in the applicant's case, could not be interpreted as a final position in relation to the liability dispute. Rather, they identified the risks to which the applicant would be exposed, if the deficiencies in his case were not properly addressed. My recusal would not have cured these deficiencies and they would have most likely been raised by any other arbitrator to whom the matter was allocated. Ultimately the matter would need to be discontinued."

The proceedings were then dismissed for want of due dispatch.

*** See also ***Parkes v Ambos Pty Ltd atf Threlfall Family Trust t/as Ambos Stockfeeds*** **[2017] NSWWCC 187 (date of decision: 10 August 2017)**, where Arbitrator Egan struck out the proceedings due to it being filed in contravention of certain legislative provisions, and for reasons that the worker had not made a valid claim at all with relevant particulars, for any type of compensation based on a proper understanding of the disease provisions and the allocation of a deemed date of injury.

[Jurisdiction of Commission; recovery of overpaid weekly benefits]

***Scott Corporation Ltd v Arnold* [2017] NSWWCC 258**

(WCC: Arbitrator Harris - Date of Decision: 7 November 2017)

The worker was receiving voluntary weekly payments. The employer subsequently wrote to the worker to advise that he had been paid at the incorrect rate following the receipt of 52 weeks' worth of weekly payments. The overpayment allegedly occurred when the worker's PIAWE was recalculated by the insurer after 52 weeks pursuant to s 44C of the 1987 Act. The employer then demanded repayment of the "overpayment" pursuant to s 58 of the 1987 Act. The amount of overpayment came to around $17,000.

The employer sought an order from the Commission to recover from the worker the overpayments.

The worker argued that the application should be dismissed because it lacked substance under s 354(7A) of the 1998 Act and that the Commission did not have a common law jurisdiction to deal with a refund of a claim for overpayment.

The arbitrator considered the relevant authorities and found that the Commission's exercise of the power to dismiss proceedings under s 354(7A) is an ongoing power and that, as observed in ***The Owners Corporation of Strata Plan 4521 v Zouk* [2007] NSWCA 23**, "lacking in substance in the context of s 354(7A) means not reasonably arguable. The different context in which the words appear does not affect this conclusion. Accordingly, the exercise of the power to dismiss a claim for lacking in substance can only be made when the claim is not reasonably arguable" (at [22]).

Arbitrator Harris acknowledged that the employer was not seeking an order under s 58(4) to adjust weekly payments of compensation, but to refund weekly payments that had been overpaid to the worker under s 58(1), which may operate in circumstances where the refund can be made for reasons that the worker has returned to employment or there has been a change in employment that affects the worker's earnings.

The arbitrator did not find any suggestion that the worker had returned to employment or there was a change in his employment which affected his earnings. Therefore, the employer cannot rely on s 58(1) to support an order for overpayment (at [26]).

With the Commission not having jurisdiction to deal with the employer's application, the proceedings were dismissed under s 354(7A) of the 1998 Act as lacking in substance. The arbitrator concluded:

> "If the proceedings are not lacking in substance, they are otherwise misconceived or frivolous because the Commission does not have jurisdiction to entertain the application in the manner in which the claim for refund of the overpayment is based."[at 31]

PROCEDURAL REVIEW UPDATES (WCD reviews)

All the procedural reviews of WCDs are published by the WIRO and can be accessed at wiro.nsw.gov.au/information-lawyers/work-capacity-decisions

Decision WIRO – 6817 (24 November 2017)

[Inconsistent insurer's decisions, out-of-time merit review application]

The insurer issued a WCD dated 15 June 2017 to advise the worker that he was assessed for the purpose of s 59A of the 1987 Act as having more than 20% WPI and was therefore a 'worker with high needs' under s 32A of the 1987 Act. Despite this, the insurer proceeded to make findings that he had current work capacity for 8 hours per day, 5 days per week. On internal review, the insurer issued a decision on 24 July 2017 and varied the WCD as described by the WIRO Delegate as follows:

> "First, the applicant was suddenly found to have an injury which 'resulted in a degree of permanent impairment assessed to be 10% or less'. This is not only incompatible with the original decision, it is also based on no disclosed evidence. Consequently the insurer advised that any entitlement to ongoing medical expenses would cease as at 23 September 2019 [sic]. This also contradicts the advice in the original decision to the effect that the applicant would have access to the medical and related expenses unlimited by time. Secondly, the insurer advised that the applicant would be entitled to continue to receive weekly payments 'until 15 June 2017 as per the work capacity decision'. This is nonsensical, since the work capacity decision specified that payments would continue until 23 September 2017, not 15 June 2017." (at [5])

Citing ***Bhusal v Catholic Health Care* [2017] NSWSC 838**, SIRA's MRS declined to accept the worker's review application because it was made out of time. On procedural review, the WIRO confirmed that the MRS was correct to decline the merit review application because of the late application. Consequently, the WIRO could also not conduct a procedural review.

In dismissing the procedural review application, the WIRO stated that:

> "The inability of the Authority to accept the application for merit review has the consequence that procedural review is also not open to the applicant. This is particularly unfortunate in this case, given the absurdity of the insurer's internal review decision." [at12]

CASE STUDIES (Cases from ILARS and the WIRO Solutions Group)

Each week, the WIRO Solutions Group and ILARS receive hundreds of inquiries and referrals and deal with various issues concerning workers compensation claims and disputes. The following notes are examples of those issues.

Transitional rate of PIAWE incorrectly applied

The worker advised his payments had been altered to the transitional rate applicable on 4 April 2014. The worker provided a list of payments to WIRO to demonstrate that he was not an existing recipient, and that he received no payments between 20 August 2012 and 3 October 2012. The insurer confirmed with WIRO that the worker had been suspended during that period because he did not provide certificates of capacity and job logs. They agreed he was not an existing recipient and was therefore entitled to back payments at the former rate from 4 April 2014 to date. The claim was transitioned to a new insurer who will be required to process more than $100,000 in back payments.

Insurer gives incorrect advice about medical entitlements

Due to the operation of s 39, the worker was advised that her weekly payments entitlements would cease in December 2017. She was assessed at 4% WPI. Her specialist advised her that she would require a knee replacement in the future, but this ought to be delayed for as long as possible. The case manager advised the worker she would only be entitled to medical benefits until December 2019, and she must make the request for the knee replacement before this date. WIRO reminded the insurer that a knee replacement is considered an artificial aid pursuant to s 59A(6) of the 1987 Act and as per the decision in ***Anderson v City of Canada Bay Council*** **[2014] NSWWCC 424**. The worker, therefore, could make the request at any time in the future. The insurer agreed that they had erred in advising she could not request knee replacement surgery beyond December 2019, and thereafter provided a letter to this effect to the worker.

Incorrect calculation of PIAWE

The worker believed that his PIAWE was calculated incorrectly. He was injured on 26 September 2016 and was totally or partially incapacitated for work until 4 June 2017. He was further injured on 4 October 2017. For this new injury, his PIAWE was calculated to include the weekly periods during which he was in receipt of payments for the first injury. WIRO requested the insurer to review the "relevant period" for the worker's weekly benefits. In reply, the insurer stated they had excluded the period of weeks during which the worker was totally incapacitated for work, but had included the period when the worker was performing suitable duties and was provided with top-up payments. The insurer advised they had received no guidance from either icare or SIRA.

WIRO cited icare's *PIAWE Masterclass* handbook (pp 36-37):
"When calculating PIAWE in the situation where the relevant period contains payment of weekly compensation, those payments of weekly compensation cannot be taken into account in the PIAWE calculation… For weeks when a worker is at work, performing work **and** in receipt of weekly payments of compensation (top ups), the weeks and earnings will be excluded from the relevant period for the calculation of PIAWE. Therefore, for weeks when a worker has no current work capacity or partial work capacity and receives a weekly payment of compensation, the week(s) will be excluded from the relevant period when calculating PIAWE."

WIRO put it to the insurer that the relevant period should exclude those weeks where the worker received top-up payments. The insurer advised they did not have the information from icare, but would, nevertheless, reduce the relevant period from 45 weeks to 18 weeks, and recalculate the worker's PIAWE. The worker will now be paid at the statutory maximum rate, with back payments to be made for outstanding weekly benefits.

Section 38 entitlements

The worker received an award for weekly compensation at the Commission. The award dated 28 July 2017 entitled the worker to weekly benefits under s 37 up until 31 August 2015. The worker's lawyer sent the insurer a letter and a certificate of capacity with a date range of between 20 May 2014 and 20 July 2017 for "no capacity to work", requesting that he be assessed under s 38 to receive weekly compensation from 1 September 2015. The insurer responded on 13 October 2017 by issuing a s 74 notice instead of a WCD. The insurer advised that they were re-assessing the worker's weekly entitlements under s 38. They then stated that the worker's entitlements to weekly benefits was reassessed under s 38(6) of the 1987 Act and determined to be $788.32 (as adjusted every six months). This would be effective from 1 September 2015. The total amount owing to the worker was almost $100,000.

Unreasonable suspension of weekly payment

The worker advised that his employment was terminated and his insurer subsequently issued a warning to suspend his weekly payments if he did not find suitable work within 14 days. The worker did not find suitable work and his weekly payments were suspended. The worker said he was in financial difficulty and unable to find work. The insurer confirmed they terminated the weekly payments pursuant to s 48A of the 1998 Act as the worker was in breach of his IMP, which stipulated that he had to find suitable employment within 14 days of his termination. WIRO put it to the insurer that it was unreasonable to expect a worker to find suitable employment within 14 days and that, since obtaining the warning, the worker had submitted emails to them to confirm that he had been actively job seeking. This would fulfil his obligations pursuant to s 48(1) of the 1998 Act, which provides that: "*A worker who has current work capacity must, in co-operation with the employer or insurer, make reasonable efforts to return to work in suitable employment or pre-injury employment at the worker's place of employment or at another place of employment.*" The insurer reviewed the suspension and conceded that the worker was not in breach of his RTW obligations under the IMP and s 48. They then made payments to the worker for the period suspension.

WIRO & OTHER ACTIVITIES

WIRO Wire – further s 39 information and funding policy changes

The WIRO issued a Wire on 7 December 2017 in relation to further relevant information for lawyers to take into account in dealing with s 39 matters, and changes in the funding of such matters to the Workers Compensation Commission. Lawyers should review this urgent WIRO Wire on the WIRO website:

WIRO Wire – Issued 7 December 2017: Section 39 information & funding policy change

WCC e-Bulletin on s 39 disputes

The Workers Compensation Commission has issued *e-Bulletin No. 73 (November 2017)*, which sets out the new procedures for disputes where entitlement to weekly payments compensation may cease before 31 December 2017 pursuant to s 39 of the 1987 Act.

The bulletin may be viewed on the Commission's website at http://wcc.nsw.gov.au/Policies-and-Publications/Pages/e-Bulletins.

One common certificate of capacity/fitness for workers compensation and CTP schemes

SIRA has published a *Workers Compensation Bulletin* Issue 34, noting that, from 1 December 2017, "one common SIRA certificate will be available for treating doctors working with claimants in the NSW workers compensation system and the compulsory third party (CTP) Green Slip scheme". The bulletin is available on SIRA's website at https://www.sira.nsw.gov.au/.

WIRO Seminars

A new round of WIRO Seminars, commencing in March 2018, is in the works. Invitations and further information will be distributed early next year.

Previous seminar material and presentations are available in the WIRO website at http://wiro.nsw.gov.au/wiro-seminar-and-workshop-presentations-and-videos.

WIRO Paralegal Courses

WIRO has successfully hosted two Sydney Paralegal Courses in early December at the Pullman Sydney Hyde Park. More courses are anticipated in 2018, commencing in February 2018, particularly in other metropolitan areas, such as Newcastle and Wollongong. Watch out for further announcements on these paralegal courses. WIRO is also inviting law practices to send their expressions of interest for WIRO to conduct in-house paralegal workshops for between five to ten attendees. EOIs for in-house workshops may be sent in the first instance to editor@wiro.nsw.gov.au.

WIRO Solutions Brief

Issue 13 of the *WIRO Solutions Brief* has been published. The newsletter is a regular insurer brief distributed to scheme agents on updates and other information relevant to the operations of the WIRO. To subscribe to the *WIRO Solutions Brief* and/or the *WIRO Bulletin*, please make sure you send an email to editor@wiro.nsw.gov.au.

***WIRO Solutions Brief* – Issue 13** is now available on the WIRO website.

WIRO meets with insurers

WIRO invites all insurers to undertake a meeting with the office to discuss the general operation of the workers compensation scheme and the operation of the WIRO Solutions Group. WIRO regularly meets with insurers to provide insurer-specific feedback on performance and to discuss systemic issues identified by the WIRO Solutions Group.

If you would like to arrange a meeting with the WIRO Solutions Group, please contact Jeffrey Gabriel at jeffrey.gabriel@wiro.nsw.gov.au or (02) 8281 6308.

FROM THE WIRO

The last month has seen a spike of inquiries and applications for funding in relation to the operation of s 39 of the 1987 Act. Unfortunately thousands of workers are set to lose their weekly benefits shortly. My office continues to provide relevant information and legal funding where possible. In the last few weeks various WIRO WIRES have been issued regarding the support available to injured workers and important information for lawyers seeking ILARS funding and proceeding to the Workers Compensation Commission.

In particular, I direct lawyers to the s 39 Guide that WIRO has published. The Guide contains information on what to take into account and practical suggestions when providing legal advice on this complex area of law. It can be found on the WIRO website: http://wiro.nsw.gov.au/section-39-guide-information-lawyers-injured-workers.

In addition, we have also produced three WIRO information videos on the impact of s 39, which are aimed specifically at workers, lawyers and scheme agents, published on our YouTube channel here: WIRO YouTube.

The majority of claims have now been transferred from QBE and CGU and WIRO has received a number of complaints from injured workers whose claims have not been determined in a timely manner due to this transition. The legislative obligation to determine claims within prescribed timeframes exists regardless of any change in insurance arrangements during that period. The transfer of a file is not an excuse. If any injured workers encounter difficulties or have questions about this process, feel free to contact WIRO on 13 9476.

The Standing Committee on Law and Justice has now published its report following its review of the *State Insurance and Care Governance Act 2015.* The report is available here: https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2462#tab-reports

Overall, 2017 has been a challenging but fulfilling year. I extend my very best wishes for the holidays and look forward to working with you in 2018.

If you wish to discuss any scheme issues or operational concerns of the WIRO office, I invite you to contact my office through editor@wiro.nsw.gov.au in the first instance.

Kim Garling

Workers Compensation Independent Review Office
Level 4, 1 Oxford Street, Darlinghurst, NSW 2010