

4 August 2008

Mr Simon Morrison
C/- Australian Lawyers Alliance

Dear Mr Morrison

**Re: Insurer Decisions and Applications for Review in relation to Section 131
of the Act**

I am writing to advise you of Q-COMP's approach to insurer decisions and review applications addressing section 131 of the *Workers' Compensation and Rehabilitation Act 2003*.

Relevant Legislation

Section 108 of the Act provides that compensation is payable for an "injury" sustained by a "worker".

Section 131(1) of the Act provides that an application for compensation is valid and enforceable only if the application is lodged by the claimant within 6 months after the entitlement to compensation arises.

Section 131(5) of the Act provides that an insurer may waive subsection (1) for a particular application if the insurer is satisfied that a claimant's failure to lodge the application was due to mistake, the claimant's absence from the state, or a reasonable cause.

Section 540 of the Act provides that a decision by an insurer to waive or not to waive section 131(1) is a reviewable decision.

Q-COMP's Approach

Where a claimant applies for review of an insurer's decision not to waive the time for applying under section 131(1) and (5), and the insurer has also rejected the application (on the basis of "worker" or "injury"), Q-COMP's approach to deciding the matter at review will be:

1. The Review Officer will advise the applicant and other relevant parties from the outset that the insurer's decision under section 131 is the only issue to be reviewed. (*This is because the issue of whether the applicant has an entitlement to compensation can only be addressed after the application is deemed to be valid and enforceable pursuant to section 131*). All aspects of the review process, including the right of appearance, provision of additional information, granting extensions and disclosures of information under the rules of procedural fairness, will focus on issues relevant to the decision made under section 131.

2. Determine whether the Application for Compensation was lodged within six months after the entitlement to compensation arises (section 131(1)). This is made by determining when the entitlement to compensation arises, having regard to section 141(1) (ie when was the applicant first assessed by a doctor) and relevant case law.
3. If it is determined that the application was lodged outside the six months (section 131(1)), determine whether or not the relevant timeframe should be waived on the basis of whether the failure to lodge the application was due to mistake, absence from the state or a reasonable cause (section 131(5)).

If the Review Officer sets aside the insurer's decision under section 131 and substitutes another decision to waive the timeframe or that the claimant complied with the timeframe, the matter is then returned to the insurer to make a decision about whether the claimant has an entitlement to compensation.

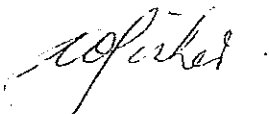
If further information pertaining to this claim arrives at the insurer while Q-COMP is conducting this review, the insurer will be able to consider this information or gather further information to determine whether the claimant has an entitlement to compensation.

Customer Service Focus

This approach is consistent with our policy, that the Review Unit will always try to preserve a person's right of review. Therefore we will not make a decision where it is more appropriate for the decision to be made by the insurer in the first instance so that parties still have a right of review before the appeal process.

Please contact me on telephone 3235 4276 if you have any queries.

Yours sincerely



Bill Fisher
Manager
Review & Administration