Supreme Court
New South Wales
Court of Appeal

Case Title:	**Goudappel v ADCO Constructions Pty Ltd**
Medium Neutral Citation:	**[2013] NSWCA 94**
Hearing Date(s):	28 March 2013
Decision Date:	29 April 2013
Before:	Bathurst CJ at [1]; Beazley P at [2]; Basten JA at [3]
Decision:	(1) Grant the applicant leave to appeal from the decision of the President of the Workers Compensation Commission answering the following question, Do the amendments to Division 4 of Part 3 of the *Workers Compensation Act 1987* introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act 2012* apply to claims for compensation pursuant to s 66 made on and after 19 June 2012 where a worker has made a claim for compensation of any type in respect of the same injury before 19 June 2012? (2) Allow the appeal and set aside the answer given in the Commission on 22 October 2012. (3) Answer the question as follows: The amendments to Division 4 of Part 3 of the *Workers Compensation Act 1987* introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act 2012* do not apply to

claims for compensation pursuant to s 66 which are made before 19 June 2012 in respect of an injury that results in permanent impairment, whether or not the claim specifically sought compensation under s 66 or s 67 of the 1987 Act.

(4) Order that the respondent pay the applicant's cost in this Court.

[Note: The Uniform Civil Procedure Rules 2005 provide (Rule 36.11) that unless the Court otherwise orders, a judgment or order is taken to be entered when it is recorded in the Court's computerised court record system. Setting aside and variation of judgments or orders is dealt with by Rules 36.15, 36.16, 36.17 and 36.18. Parties should in particular note the time limit of fourteen days in Rule 36.16.]

Catchwords:

WORKERS' COMPENSATION – meaning of "claim for compensation" – *Workers Compensation Act 1987* (NSW), Sch 6, Pt 19H, cl 15 – whether "claim for compensation" referred to a claim for compensation generally or a claim specifically for lump sum compensation – where clause relates to amendments to lump sum compensation entitlements – where no statutory requirement to make a separate claim for lump sum compensation

STATUTORY INTERPRETATION – whether Sch 6 of the *Workers Compensation Act 1987* (NSW) permitted regulations to prejudice accrued rights – whether any express intention or necessary implication that Sch 6 created such a power – where Sch 6, Pt 20, cl 1(3) precluded regulations from prejudicing rights accrued before publication of regulation in Gazette – where Sch 6, Pt 19H, cl 5 purported to limit operation of Pt 20, cl 1(3)

WORKERS COMPENSATION – whether Sch 6 of the *Workers Compensation Act 1987* (NSW) permitted regulations to prejudice accrued rights – whether any express intention or necessary implication that Sch 6 created such a power

	WORKERS COMPENSATION – when right to compensation for permanent impairment accrues – when worker who receives injury resulting in permanent impairment "entitled to receive" compensation – *Workers Compensation Act 1987* (NSW), s 66 WORDS AND PHRASES – "claim for compensation" – *Workers Compensation Act 1987* (NSW), Sch 6, Pt 19H, cl 15 WORDS AND PHRASES – "entitled to receive" – *Workers Compensation Act 1987* (NSW), s 66
Legislation Cited:	*Interpretation Act 1987* (NSW), s 30 *Workers Compensation Act 1987* (NSW), ss 66, 67; Pt 19H, Sch 6, cll 1, 3, 5, 15; Pt 20 Workers Compensation Amendment (Transitional) Regulation 2012, Sch 1, cl 11 *Workers Compensation Legislation Amendment Act 2012* (NSW), Sch 12 *Workplace Injury Management and Workers Compensation Act 1998* (NSW), ss 4, 260, 263, 351 WorkCover Guidelines, Pt 5.1
Cases Cited:	*Bresmac Pty Ltd v Starr* (1992) 29 NSWLR 318 *Perrott v Crisp* [1999] NSWCA 239 *Speirs v Industrial Relations Commission (NSW)* [2011] NSWCA 206; 81 NSWLR 348 *TNT Australia Pty Ltd v Horne* (1995) 36 NSWLR 630
Category:	Principal judgment
Parties:	Ronald Goudappel (Applicant) Adco Constructions Pty Ltd (Respondent) WorkCover Authority of NSW (Intervenor)
Representation	
- Counsel:	J Simpkins SC/E G Romaniuk/L Morgan (Applicant) A J Bartley SC/R Stanton/B Phillips (Respondent) M J Cranitch SC/S Flett (Intervenor)

- Solicitors:	Leitch Hasson Dent (Applicant) Rankin Nathan (Respondent) WorkCover Authority of NSW (Intervenor)
File number(s):	CA 2012/359348 CA 2013/20584
Decision Under Appeal	
- Court / Tribunal:	Workers Compensation Commission of NSW
- Before:	Judge Keating, President
- Date of Decision:	22 October 2012
- Citation:	*Goudappel v ADCO Constructions Pty Ltd* [2012] NSWWCCPD 60
- Court File Number(s)	WCC 2012/7810

JUDGMENT

1 **BATHURST CJ**: I agree with Basten JA and with his Honour's reasons.

2 **BEAZLEY P**: I agree with Basten JA.

3 **BASTEN JA**: On 17 April 2010, Mr Goudappel ("the applicant") suffered an injury at work when a bundle of steel purlins fell from a forklift, crushing his left foot and ankle. On 19 April 2010 he made a claim for compensation against his employer, ADCO Constructions Pty Ltd. He now seeks a lump sum compensation payment under s 66 of the *Workers Compensation Act 1987* (NSW) for permanent impairment.

4 Amendments made to s 66 on 27 June 2012 limited payments of lump sum compensation to workers with injuries causing greater than 10% whole person permanent impairment. Under the amended provision the applicant would fail, his impairment being assessed at 6%. Under the

previous regime, he would have obtained a payment of $8,250. His entitlement depended upon the operation of transitional provisions introduced by the *Workers Compensation Legislation Amendment Act 2012* (NSW) ("the 2012 Amending Act"), which said that the amendments applied to claims made on and after 19 June 2012.

5 In the Workers Compensation Commission, the President, Judge Keating, granted leave to refer a question of law on the basis that the question involved a novel or complex question of law for the purposes of s 351(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) ("*Workplace Injury Act*"). The question referred was in the following terms:

> Do the amendments to Division 4 of Part 3 of the *Workers Compensation Act 1987* introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act 2012* apply to claims for compensation pursuant to s 66 made on and after 19 June 2012 where a worker has made a claim for compensation of any type in respect of the same injury before 19 June 2012?

6 President Keating answered the question in the affirmative: *Goudappel v ADCO Constructions Pty Ltd* [2012] NSWWCCPD 60. (The terms of the answer will be noted below.) The procedure adopted in the Commission resulted in an interlocutory decision from which an appeal may be brought to this Court (on a point of law) only with leave of the Court. Leave is also required because of the small amount involved: *Workplace Injury Act,* s 353(1) and (4). Because the question of law is both novel and complex, as accepted by the President in granting leave for referral of the question to himself, and because many applications are expected to depend upon the answer, there should be a grant of leave to appeal. Also for those reasons, the hearing of the matter in this Court was expedited.

7 The decision of the President turned on a straightforward issue, namely whether the phrase in a transitional provision, "claim for compensation", referred to a claim for compensation generally, or a claim specifically for lump sum compensation. In a thorough and comprehensive assessment

of the legislation and the submissions before him, the President adopted the latter construction. However, for the reasons set out below, the former construction should be preferred. To the extent that the approach adopted by the President was reflected in a separate transitional regulation, the regulation was beyond power and cannot support the conclusion reached in the Commission. The appeal must be allowed and the question answered favourably to the applicant.

The transitional provisions

8 Generally, amending or repealing legislation will not affect the previous operation of the statute, nor any right, privilege, obligation or liability acquired, accrued or incurred under it: *Interpretation Act 1987* (NSW), s 30(1). That general provision is subject to the operation of any specific saving or transitional provisions: s 30(2)(d). In relation to the 2012 Amending Act, there are three transitional provisions which compete for attention in respect of the amendment to s 66. It is convenient to deal first with the two statutory provisions and then with the provision found in regulations.

(1) Statutory transitional provisions

9 The provisions introduced by Schedule 12 of the 2012 Amending Act are now found in Part 19H of Schedule 6 of the *Workers Compensation Act*:

> **"3 Application of amendments generally**
>
> (1) Except as provided by this Part or the regulations, an amendment made by the 2012 amending Act extends to:
>
> (a) an injury received before the commencement of the amendment, and
> (b) a claim for compensation made before the commencement of the amendment, and
> (c) proceedings pending in the Commission or a court immediately before the commencement of the amendment.
>
> (2) An amendment made by the 2012 amending Act does not apply to compensation paid or payable in respect of any period before the commencement of

the amendment, except as otherwise provided by this Part.

...

15 Lump sum compensation

An amendment made by Schedule 2 to the 2012 amending Act extends to a claim for compensation made on or after 19 June 2012, but not to such a claim made before that date."

10 The argument, both in the Commission and in this Court, focused on the operation of cl 15. The scope and operation of cl 3(1) were not treated as relevant because it was expressed as a general provision subject to exceptions provided by Part 19H: clause 15 constituted such an exception.

11 With respect to cl 15, the applicant contended that his claim was not affected by the amendments because he had made a "claim for compensation" on 19 April 2012, three months before the critical date. "Claim" is defined, relevantly for present purposes, to mean "a claim for compensation": *Workplace Injury Act,* s 4(1). The term "compensation" is defined to mean "compensation under the Workers Compensation Acts [a phrase which includes both the *Workers Compensation Act* and the *Workplace Injury Act*], and includes any monetary benefit under those Acts": ibid. Accordingly, he submitted, the phrase "claim for compensation" covers a claim for any monetary benefit available under the *Workers Compensation Act.* The phrase "lump sum compensation" is also a defined term and means "compensation under Div 4 of Part 3 of the [*Workers Compensation Act*]", which Division included s 66 and s 67: *Workplace Injury Act*, s 4(1). Had it been intended to require an extant claim for lump sum compensation as at the specified date, cl 15 could have so stated, but it did not.

12 The respondent and WorkCover argued that because cl 15 addressed the operation only of amendments with respect to lump sum compensation, it should be inferred that it operated with respect to claims expressed to be for such payments. That submission would have force if the Acts required

a separate claim for such payments, but they do not. As the applicant noted, claims for compensation are provided for in Chapter 7, Part 2, Division 2 of the *Workplace Injury Act,* which relevantly provides:

> "**260 How a claim is made**
>
> (1) A claim must be made in accordance with the applicable requirements of the WorkCover Guidelines."

13 The WorkCover Guidelines do not in terms require that there be a separate claim for lump sum compensation. They provide for a "permanent impairment claim form", but note that such a form is *not* required "if a claim is already in progress for the injury and the insurer has sufficient information": Guidelines, Part 5.1. A permanent impairment claim form *is* required "if a worker is initiating a claim for permanent impairment ... and has not previously made a claim in respect of the injury or if the insurer does not have sufficient information about the injury for which the claim is being made": ibid.

14 There are prescribed periods within which a claim must be made, set out in s 261. That section relevantly states:

> "**261 Time within which claim for compensation must be made**
>
> ...
>
> (3) For the purposes of this section, a person is considered to have made a claim for compensation when the person makes any claim for compensation in respect of the injury or death concerned, even if the person's claim did not relate to the particular compensation in question."

15 There is also a requirement that all claims for "permanent impairment compensation or pain and suffering compensation in respect of an injury must, as far as practicable, be made at the same time": s 263(1). That provision applies to claims for compensation under ss 66 and 67.

16 None of these provisions suggest that the Acts required, in June 2012, that an injured worker must make a separate claim for lump sum compensation: rather they are consistent with the contrary conclusion. It must follow that cl 15 did not require the application of the amended s 66 where the worker was able to rely upon a claim made prior to 19 June 2012 to establish an entitlement to permanent impairment compensation. (To the extent that reliance was sought to be placed upon some further injury not specified in that claim, a different issue might arise, but that issue does not arise in this case and need not be considered.)

17 If the operative provision were cl 15, that conclusion would result in the question being answered favourably to the applicant. The President took a different view. He held that because cl 15 dealt only with amendments to the lump sum compensation provisions, the phrase "claim for compensation" must refer to a claim for lump sum compensation, by which he appears to have meant a claim expressly adverting to lump sum compensation, or possibly to s 66 or s 67 of the *Workers Compensation Act*. Because of his conclusion as to the operation of cl 15, the President did not need to consider the operation of the regulation, although he noted that the applicant challenged its validity.

(2) Transitional regulation

(a) source of regulation-making power

18 Once the President's conclusion as to the scope of cl 15 is rejected it is necessary to consider the operation of the regulation, although neither the respondent nor WorkCover sought to rely on it in written submissions filed in this Court. On notice that the Court required counsel to address it, it was dealt with orally, but not with great enthusiasm. The applicant maintained his submission that the relevant provision was invalid.

19 Because the issue of validity is raised, it is necessary to identify the relevant regulation-making powers, before turning to the text of the regulation. There is a general power to make regulations, not inconsistent with the Act, to be found in the *Workers Compensation Act*, s 280(1). That

power would not permit a regulation which was inconsistent with a provision in Schedule 6 of the Act. Accordingly, it is necessary to turn to the terms of Schedule 6 which permit regulations of a savings or transitional nature. To that end, Schedule 6, Part 20 provides:

> "**Part 20 Savings and transitional regulations**
>
> **1 Savings and transitional regulations**
>
> (1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of the following Acts:
>
> this Act and the cognate Acts
> ...
> any other Act that amends this Act
>
> (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later day.
>
> (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
>
> (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette, or
> (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication in the Gazette.
>
> (4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.
>
> ..."

20 The operation of Part 20 was not displaced, but was affected, by the 2012 Amending Act, which inserted Part 19H, including the following clause:

> "**5 Savings and transitional regulations**
>
> (1) Regulations under Part 20 of this Schedule that contain provisions of a saving or transitional nature

consequent on the enactment of the 2012 amending Act may, if the regulations so provide, take effect as from a date that is earlier than the date of assent to the 2012 amending Act.

(2) Clause 1 (3) of Part 20 does not limit the operation of this clause.

(3) A provision referred to in subclause (1) has effect, if the regulations so provide, despite any other provision of this Part.

(4) The power in Part 20 to make regulations that contain provisions of a saving or transitional nature consequent on the enactment of the 2012 amending Act extends to authorise the making of regulations whereby the provisions of the Workers Compensation Acts are deemed to be amended in the manner specified in the regulations."

(b) the transitional regulation

21 On 1 October 2012 the Workers Compensation Amendment (Transitional) Regulation 2012 ("the Transitional Regulation") came into operation. Schedule 1, item 5 (which is now Schedule 8 of the Workers Compensation Regulation 2010) relevantly provides:

"**11 Lump Sum Compensation**

(1) The amendments made by Schedule 2 to the 2012 amending Act extend to a claim for compensation made before 19 June 2012, but not to a claim that specifically sought compensation under section 66 or section 67 of the 1987 Act.

(2) Clause 15 of Part 19H of Schedule 6 to the 1987 Act is to be read subject to subclause (1)."

22 Clause 11 purports to provide for the operation of the amending provisions, not by excepting all "claims for compensation" made before 19 June 2012 (as the Act had done), but by excepting only those claims that "specifically sought compensation under ss 66 or 67 of the 1987 Act" and were lodged before that date. As it expressly states, it varies the operation of cl 15 in Schedule 6, Part 19H to the Act. That statement was necessary either to conform to Part 20, cl 1(4) or Part 19H, cl 5(4), or possibly both.

23 Before the Commission, the applicant contended that cl 11 was invalid because it purported to operate from 1 October 2012, being four days before its publication in the Gazette on 5 October. He argued that it could not affect his rights prejudicially to the extent that they existed before the date of its publication, calling in aid sub-cl (3)(a) of Part 20 of the *Workers Compensation Act*, Schedule 6. However, nothing occurred in that four day period which was relevant to the applicant's case. It was only to the extent that it might have had a prejudicial effect prior to publication that the provision would have contravened sub-cl (3)(a). Clause 11 was not invalid for that reason.

24 A different argument was presented in this Court. Leaving to one side for present purposes the effect of cl 5, to be valid, the Regulation must conform to the power conferred in Pt 20, cl 1 of Sch 6 to the Act. That clause might (but does not) state that a regulation cannot affect a right which accrued before the date of publication of the regulation. Rather, it permits a regulation to "take effect" at a date prior to publication (cl 1(3)), though not a date earlier than the date of assent to the Act: cl 1(2). If a regulation is backdated so as to take effect prior to the date of its publication, it does not operate to affect prejudicially "the rights of [any] person existing before the date of its publication": cl 1(3)(a). If the regulation is not expressed to "take effect" from an earlier date, cl 1(3)(a) does not operate; however, it would be absurd to read the Act as preventing a regulation interfering with accrued rights in respect of a period of backdating, which must be limited to the period after the Act commenced, but leaving open the possibility that the regulation could prejudice rights which had arisen before the Act commenced. The preferable reading is that Part 20 cl 1 does not permit a regulation which interferes with rights which accrued prior to the date of its publication, whether or not it purported to take effect at an earlier date. In the event of doubt, general principles support the adoption of such an interpretation: *Maxwell v Murphy* [1957] HCA 7; 96 CLR 261 at 267 (Dixon CJ).

25 It is necessary next to consider the operation of cl 5 in Part 19H of Schedule 6 to the Act. This provision was not referred to in any written submission before the Court and was mentioned but briefly by senior counsel for WorkCover. In part its operation is clear; in other respects, less so.

26 In two respects it clearly expands the regulation-making power conferred by Part 20 of the Schedule. First, cl 5(1) permits a regulation to take effect from a date earlier than the date of assent to the 2012 Amending Act, which would have been the earliest date permitted by Part 20, cl 1(2). Secondly, cl 5(4) permits the regulation to "amend" provisions of the *Workers Compensation Act*. This expands the terms of Part 20, cl 1(4), which permits a regulation to have effect notwithstanding any other clause of Schedule 6 only. This provision is of not specific consequence in the present case as the transitional regulation purported to vary only cl 15 of Part 19H of Schedule 6. The precise scope of cl 5(4) must, in any event, remain somewhat obscure. Its operation is restricted to regulations of a "saving or transitional nature consequent on the enactment of the 2012 amending Act"; it is not obvious that this power would permit a regulation to do more than vary the savings and transitional provisions in Schedule 6, a consequence covered by Part 20, cl 1(4) in any event.

27 What is less clear is the intended operation of cl 5(2), providing that cl 1(3) of Part 20 "does not limit the operation of this clause". As already noted, cl 1(3) only operated so as to prevent a backdated regulation prejudicially affecting accrued rights existing before the date of its publication. To the extent that cl 5 permits further backdating, it is arguable that cl 5 could allow a regulation to operate so as to extinguish accrued rights during the period of backdating. If that were the intention, it could have been more clearly expressed. However, cl 5 is irrelevant for present purposes unless the effect of cl 5(2) is to expand the power conferred by Part 20 so as to allow a regulation to extinguish rights which had accrued prior to the date of its publication. There is nothing to that effect expressly stated in cl 5 or which arises as a matter of necessary implication. Clause 5 itself is not

the source of a regulation-making power: that power is still found in Part 20, as qualified or expanded by cl 5. The absence of power under Part 20 to make a regulation prejudicially affecting rights which had accrued prior to the date of publication of the regulation did not derive from cl 1(3), (which only addressed the period of backdating, if any) but from the absence of any expressed intention to that effect or intention derived by necessary implication. Further, cl 5(2) is not addressed to the operation of cl 1(3) in respect of the power conferred by Part 20, but only its effect with respect to the expansion effected by cl 5 itself. Accordingly, even if the construction of cl 1(3) were a necessary element in the conclusion reached with respect to the operation of Part 20 more generally, that role is not affected by cl 5(2).

28 It follows that while cl 5 expands the temporal reach of the power conferred by Part 20, cl 1(2) to make a transitional regulation having effect from a date prior to the date of its publication, it does not expand the consequences of such a regulation. Even if it did have that effect, it would not affect the outcome in the present case unless it prejudicially affected rights which had accrued prior to the date on which it commenced. As the transitional regulation did not seek to backdate its operation to a point prior to the date of assent of the 2012 Amending Act, cl 5(1) was not relevant.

(c) accrued rights

29 The next step is to identify whether the applicant had a right to a benefit under s 66 and, if so, when it accrued. Prior to its amendment, s 66(1) provides that "[a] worker who receives an injury that results in permanent impairment *is entitled to receive* from the worker's employer compensation for that permanent impairment as provided by this section" [emphasis added]. Accordingly, the entitlement or right may be said to arise once two events have occurred, namely (a) receipt of an injury, and (b) a resultant permanent impairment.

30 There is authority in this Court for the conclusion that the right to compensation under s 66 of the *Workers Compensation Act* accrues at the

time of injury. As explained by Priestley JA (Handley and Sheller JJA agreeing) in *Bresmac Pty Ltd v Starr* (1992) 29 NSWLR 318 at 327, in relation to the operation of s 66 of the *Workers Compensation Act*, albeit in an earlier form:

> "The usual form of words in a workers' compensation statute entitling a worker to compensation for injury is construed as causing the entitlement to accrue upon the happening of the injury: *Stephens v Railway Commissioners (NSW)* (1930) 31 SR 138; 48 WN (NSW) 69; *Kraljevich v Lake View and Star Ltd* (1945) 70 CLR 647. In the latter case, Dixon J indicated that he based that construction upon words in the relevant section of the Western Australian *Workers' Compensation Act 1912* which said that employers 'shall, subject to the Act, be liable to pay compensation' upon personal injury being caused in conditions involving liability (at 652). In the present case, the corresponding words in s 66(1), 'a worker who has suffered ... loss ... as a result of an injury is entitled to receive ... by way of compensation ... the amount ...', seem to me to require the same construction."

31 This authority was followed by the Court in *TNT Australia Pty Ltd v Horne* (1995) 36 NSWLR 630 and in *Perrott v Crisp* [1999] NSWCA 239. The form of the relevant provisions has changed, but the approach adopted by this Court has not. In *Speirs v Industrial Relations Commission (NSW)* [2011] NSWCA 206; 81 NSWLR 348, Giles JA held (Allsop P and Hodgson JA agreeing) at [85]:

> "Respectfully differing from the Full Bench, in my opinion 'entitled to' in the definition in s 240(2) of the [*Workers Compensation Act*] does not mean entitlement established by a determination of the Workers Compensation Commission or the District Court, or by decision of the Board. The entitlement is a right subsisting in law when there has been injury satisfying s 4 and s 9A of the [*Workers Compensation Act*]. It may be recognised and given effect without tribunal or court determination, as will commonly be the case."

32 The application of this reasoning to the current terms of s 66 was not in dispute: in any event, the analysis conforms to the statutory language. It follows that a "right" to compensation arose at the date of injury, although quantification of the amount payable depended on agreement or an award of the Commission.

33 Accordingly, the applicant had a right to obtain a benefit under s 66 which accrued at the date of injury. To the extent that the transitional regulation sought to prejudicially affect that right, it was beyond power and invalid. The applicant is entitled to compensation under s 66 to be calculated in accordance with that provision as it stood prior to the 2012 amending Act, contingent upon acceptance or proof of the necessary elements of liability.

Conclusions

34 There was a degree of awkwardness in the formulation of the question. It asked whether the amendments applied to claims for compensation made on and after 19 June, in circumstances where a claim for compensation had been made before 19 June. The assumption that there would need to be a subsequent claim, specifically for lump sum compensation, despite an earlier general claim having been made, was contrary to the submissions made by the applicant. It might have been preferable if the apparent discrepancy had been identified and the question reformulated before it was answered. The answer given reflected the assumption:

> "The amendments to Division 4 of Part 3 of the *Workers Compensation Act 1987* introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act 2012*, apply to claims for compensation pursuant to s 66 made on and after 19 June 2012, where a worker has made a claim for compensation of any type in respect of the same injury before 19 June 2012."

35 That answer did not reflect the reasoning of the Commission, nor, indeed, was it consistent with cl 11 of the Transitional Regulation. The answer should in any event be set aside.

36 Moreover, for the reasons given above, the applicant's arguments should be accepted. The Court should make the following orders:

(1) Grant the applicant leave to appeal from the decision of the President of the Workers Compensation Commission answering the following question,

Do the amendments to Division 4 of Part 3 of the *Workers Compensation Act 1987* introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act 2012* apply to claims for compensation pursuant to s 66 made on and after 19 June 2012 where a worker has made a claim for compensation of any type in respect of the same injury before 19 June 2012?

(2) Allow the appeal and set aside the answer given in the Commission on 22 October 2012.

(3) Answer the question as follows:

The amendments to Division 4 of Part 3 of the *Workers Compensation Act 1987* introduced by Schedule 2 of the *Workers Compensation Legislation Amendment Act 2012* do not apply to claims for compensation pursuant to s 66 which are made before 19 June 2012 in respect of an injury that results in permanent impairment, whether or not the claim specifically sought compensation under s 66 or s 67 of the 1987 Act.

(4) Order that the respondent pay the applicant's cost in this Court.

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I certify that the preceding 36 paragraphs are a true copy of the reasons for judgment of the Hon Justice Basten and of the Court

....

Associate
29 April 2013