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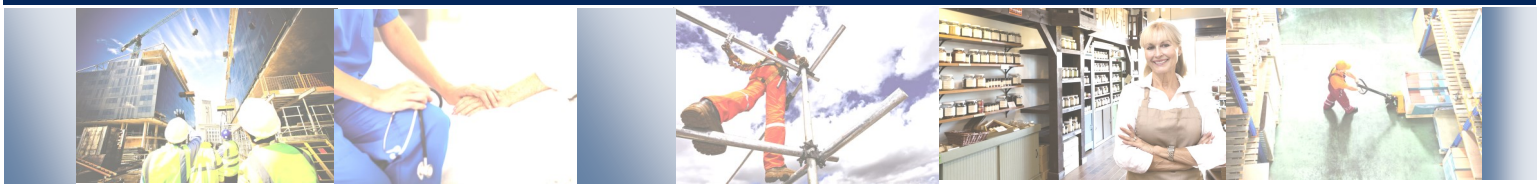

RANKIN ELLISON CASE NOTES

Is an injured worker entitled to s 60 medical expenses abroad?

State of New South Wales v Stockwell [2015] NSWWCCPD 9

In 2015, the Workers Compensation Commission determined in *State of New South Wales v Stockwell [2015]* NSWWCCPD 9 ("Stockwell") that an injured worker's entitlement to Section 60 medical expenses does not theoretically cease in the event that they permanently move abroad. However, in practice, an Insurer will not typically be liable to pay Section 60 medical expenses to a worker who is treated abroad.

In Stockwell, the Worker was awarded ongoing weekly benefits and medical expenses and successfully claimed lump sum compensation in respect of a work-related psychological injury. Approximately one year later, the Worker and his family moved to reside permanently in the United States of America. Notwithstanding the Claimant's move abroad, the Commission ordered that the Claimant's compensation be continued pursuant to Section 53 of the *Workers Compensation Act* ("WC Act"), on the basis the his injuries were likely to be permanent.

The Insurer ultimately notified the Worker that his entitlement to Section 60 compensation had ceased since the WC Act made no provision for the payment of medical expenses that were not prescribed and administered in Australia. On Appeal, the Commission supported the Insurer's declinature, setting out a similar reasoning to the following:

<u>The Substantive Law</u>

Section 23 of the *Workers Compensation Act 1987* (NSW) ("WC Act") provides that age and place of residency are not relevant to liability for compensation. In *Merriman v Anaco Holdings Pty Ltd v Paddington Fresh Foods and Broadway [2006]* NSWWCCPD 5, it was determined that a worker's permanent move abroad did not of itself disentitle her from instituting proceedings or receiving compensation payable under the WC Act.

Section 60 of the WC Act makes provision for liability for compensation in respect of cost of medical or hospital treatment and rehabilitation. More specifically, Section 60(2A)(b) of the WC Act provides that an employer is not liable for medical expenses where the associated "medical treatment" or service is provided by a person/s who are not appropriately qualified. "Medical treatment" in the context of the WC Act is defined as (among other things) treatment by a "medical practitioner". Interestingly, in *Stockwell*, it was found that treatment by a "medical practitioner" encompasses a range of things, including examination, surgery and the application of prescription medicines.

Pursuant to Section 21D of the *Interpretation Act 1987* (NSW) ("Interpretation Act"), reference to a "Health Practitioner" in any Act or Instrument is taken to mean a person who is registered for medical practice under the *Health Practitioner Regulation National Law* (NSW). *Stockwell* took no issue with the fact that the Interpretation Act refers to "health practitioners" as distinct from "medical practitioners", and therefore, it is inferred that the two phrases are synonymous.

<u>Implications</u>

The Commission's decision in *Stockwell* has provided further clarity in respect of Sections 59 and 60 of the WC Act. On the basis of that decision, Insurers are not liable for reasonably necessary medical treatment (including purchase of prescription medicine) unless it is provided by a medical practitioner registered to practice under the *Health Practitioner Regulation National Law* (NSW).

If you have any questions regarding a particular workers compensation claim, please contact our team by phoning 02 4929 9333 (Newcastle) or 02 8297 5900 (Sydney).

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