Western Australia: New Workers Compensation Law

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A number of decisions have been delivered relating to the *Workers Compensation and Rehabilitation Amendment Act* 1993 which has significantly altered personal injury law applicable in Western Australia where injuries were sustained in the course of employment. Listed below is a summary of some important decisions:

In *Fraser v Southern Cross Homes (WA) Incorporated*, District Court No. 7135 of 1993 (unreported, District Court library no. 4050, published 10 June 1994), it was held that the word "likely" in Section 5(1) of the Act should be given its ordinary meaning - a meaning which, as Mason J (as he then was), Wilson and Deane JJ commented in *Boughey v The Queen* (1986) 161 CLR 10 at 21, conveys a notion of a substantial - a real and not remote - chance. In so deciding, the court referred to *State Bank v Hallaby* (1992) 59 SASR 304 at 312 where King CJ said in reference to the word "likely" that, "it imports more than a possibility but less than a moral certainty. It is a different concept from "more likely than not" which expression would equate to a balance of probabilities of a better than 50% chance".

Bayes v The Board of Management of Sir Charles Gairdner Hospital and Board of Management of Fremantle Hospital, District Court No. 6557 of 1993 (delivered 29 July 1994), where it was held that s.11 proceedings under the *Workers Compensation and Rehabilitation Amendment Act* are "something of a hybrid character when subjected to the usual tests as to what is "final" and what is "interlocutory' but held, following *Lewandowski v Lovell* (1991) 4 WAR 311, 316, that proceedings under s. 11 should be regarded as "final" (considerations as to whether or not and if so how Order 37 Rule 6 of the Rules of the Supreme Court apply in such cases.

McComish v Fydelor and State Government Insurance Commission District Court No. 4434 of 1993 (unreported, delivered 21 October 1994, library no. 4195), where held that where there were multiple causes of actions including non"notifiable causes", s. 11 of the Act does not apply to proceedings involving multiple defendants and non-notifiable causes and the s. 11 application in that case was held to be incompetent and dismissed.

McGauley v Tiwest Pty Ltd, District Court No. 446 of 1994 unreported, delivered 18 October 1994) where held at the 60 day time limit under s. 11 of the Act runs against the defendant only when the defendant is made a party to the proceedings by the commencement and service of a writ on the defendant.

Bullock v View Point Holdings Pty ltd, District Court No. 6805 of 1993 (unreported, delivered 2 August 1994, library no. 4105), where held at an application under section 11 brought within 60 days after the defendant's solicitors received a copy of the certificate of registration from the Plaintiff's solicitors is competent even though the application is brought 60 days after the action is commenced.

(A number of decisions have now been reported relating to Section 93ID of *the Workers Compensation and Rehabilitation Amendment Act* 1993 and a summary of the more important decisions will be provided in the next newsletter).

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