Medical Panels in Victoria

Arushan Pillay
Joan Rosanove Chambers, Melbourne

THE IMPORTANCE OF THE MEDICAL PANEL OPINION

1. In Victoria, primarily in relation to claims made under the *Accident Compensation Act* 1985 (Vic), *WIRCA* 2013 (Vic) Medical Panel opinions are final and binding and must be adopted by a Court, s. 68(4), ACA and s. 6(9) *WIRCA*. The opinions provided by Medical Panels in *Accident Compensation Act*/*WIRCA* cases therefore have a severe effect. They determine the rights of the parties once and for all. Under the *Wrongs Act* 1958 (Vic) s. 28LZH, a Medical Panel opinion determines whether an injured person has satisfied the threshold level necessary to bring a non-economic loss claim. It is in effect the ultimate arbiter of whether a plaintiff can bring a general damages claim, 28LZI.

2. There is no ability under the *Accident Compensation Act*/*WIRCA* or the *Wrongs Act* to appeal the decision of the Medical Panel on the merits of the opinion. Any rights for review are confined to the area of administrative law. To this extent upon the receipt of a Medical Panel opinion a practitioner must take great care in deciding whether or not to institute a judicial review of a Medical Panel opinion; it may well be their client's last chance to pursue or alternatively defeat a claim.

TIME WITHIN WHICH TO MAKE AN APPLICATION FOR JUDICIAL REVIEW

3. The first task is to identify within which time a decision to review a Medical Panel opinion must be made by. There are two routes by which a Medical Panel opinion can be reviewed. The first occurs under the *Administrative Law Act* 1978 (Vic) or pursuant to Order 56 of the *Supreme Court Rules.*

4. Section 4(1) of the *Administrative Law Act* states: *"an application for review shall be made ex parte not later than 30 days after the giving of notification of the decision or the reasons therefore (whichever is the later) supported by evidence on affidavit showing a prima face case for relief under Section 7".*

5. Order 56.02(1) of the *Supreme Court Rules* states: *"a proceeding under this Order shall be commenced within 60 days after the date when grounds for the grant of the relief or remedy claimed first arose".* Order 56.02(2) states: *"the Court shall not extend the time fixed by paragraph (1) except in special circumstances."*

6. It is plain that the time provision within the *Supreme Court Rules* is much more lenient than that provided for in the *Administrative Law Act*; 60 days as opposed to 30 days. Furthermore the *Supreme Court Rules* provide for an extension of time in special circumstances. This can often be useful.

7. There are also other advantages of beginning a judicial review proceeding under the *Supreme Court Rules*. Most importantly this is because the

Administrative Law Act requires, initially, an ex parte application to be made to an Associate Justice of the Supreme Court for an interim order that grounds exist as to why the opinion of the Medical Panel should be reviewed. This provides an opportunity for an Associate Justice to find against the applicant. If the applicant is successful the matter then goes to a full hearing before a Justice of the Supreme Court where once again the applicant will have to put and prove their case. Proceedings under the *Administrative Law Act* then come with two stages through which the applicant must pass to be successful. Under Order 56 the applicant only needs to put and prove their case on one occasion.

8. Once the Medical Panel opinion arrives on a practitioner's desk it is then necessary to establish when the 60 days begins to run from. Order 56.02(2) states that *"…the date when the grounds for the grant of the relief or remedy first arose shall be taken to be the date of the judgment, order, conviction, determination or proceeding".* Often the difficulty in ascertaining when time begins to run is that the Medical Panel opinion certificate is signed by the doctors comprising the Medical Panel and by the Convener of the Medical Panel on one day, the letter dispatching the opinion to the parties occurs on another day, the opinion arrives in the solicitor's office on a third day. A fourth date might also arise where reasons are not supplied initially with the opinion but come at a much a later time. At times it has occurred that the reasons for the opinion are provided after the elapse of 60 days from the date of the certificate of opinion. Despite what is said in Order 56.02(2) there is some extremely limited support in the decision of *Treacy v Newlands and Others* [2007] VSC 224 at [7] that the 60 days will not start to run where it is the receipt of reasons that reveals the defect in the opinion

that has been given. I say that this is an extremely limited support as in a matter that l argued before Justice Pagone he was firmly of the view that Order 56.02(2) meant that the date on which the opinion certificate was signed was the commencing date for the 60 days. It was irrelevant, in his opinion, when the opinion certificate reached the parties and furthermore it was irrelevant when the reasons reached the parties.

9. If a party does find itself out of time then they must demonstrate that special circumstances exist which would warrant the extension of time. In *Treacy v Newlands* this is exactly what His Honour Justice Osborne decided as the reasons in fact illuminated why the opinion was potentially error laden**.** For a discussion as to what constitutes special circumstances see *Carra and Another v Hamilton and Others* (2001) 3 VR 114 at 25.

10. Having established the time within which a review application must be made it is then necessary to begin an examination of the opinion itself. While reasons for opinion are supplied by the Panel as routine nowadays it is the opinion which is reviewed and quashed if error is found, not the reasons.

GROUNDS FOR REVIEW

11. The grounds for review can be grouped loosely under the following headings:

(A) JURISDICTIONAL ERROR

12. In *Craig v South Australia* (1995) 184 CLR 163 at 179 it was said:

> *"..if such an administrative tribunal falls into an error of law which causes it to identify a wrong issue, to ask itself a wrong question, to ignore relevant material, to rely on irrelevant material or, at least in some circumstances to make an erroneous finding or to reach a mistaken conclusion and the tribunals exercise or purported exercise of power is thereby effected, it exceeds its authority or powers. Such an error of law is jurisdictional error which will invalidate any order or decision of the tribunal which reflects it."*
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> See also *Minister for Immigration and Cultural Affairs v Yusuf* (2001) 206 CLR 323 at [82] and [83].

It can be seen from the above quote that jurisdictional error is often broken up into further sub parts which can be identified under very broad categories as follows:

(i) An identification of a wrong issue;
(ii) Ignoring a relevant material consideration;
(iii) Relying on irrelevant material;
(iv) The making of an erroneous finding or coming to a mistaken conclusion;
(v) An excess of the tribunal's authority.

13. The best possible way to understand how some of these errors might present themselves is to look at some practical example that the Courts

have found to constitute jurisdictional error in the Medical Panel context. In the decision of *Ripper v Kotzman* [2008] VSC 448 the Court was faced with a situation where it was alleged, by an injured worker, that the Medical Panel had taken an incorrect history. The facts were that a solicitor, Mr. Ripper, was returning from inspecting some files. On his way back to the office he was struck by a car and sustained head injuries. As a result of those head injures he claimed that he sustained a total loss of taste and a total loss of smell, amongst other things. The plaintiff made a claim on his employer which was accepted for the purposes of statutory compensation. He then came to make a permanent impairments benefits claim under section 98C/98E of the *Accident Compensation Act*. He listed on his claim form both total loss of taste and total loss of smell. During the course of assessment by the insurer he consistently provided a history of total loss of taste and total loss of smell. In the end the insurer made an assessment of the plaintiff's 98C whole person impairment pursuant to the AMA Guides Fourth Edition. The plaintiff disputed the assessment and the matter was then referred to the Medical Panel. The Medical Panel was asked this question *"does the worker have an accepted injury, which has resulted in a total loss injury mentioned in the table in section 98E(1)?"* The answer given by the Panel was *"the Panel is of the opinion that the worker has a total loss of the sense of smell, when assessed in accordance with section 98E of the Act."* The reasons which were provided to the plaintiff however stated this *"[the plaintiff] complains of a complete loss of his sense of smell and a* ***partial*** *loss of taste effecting sugar and salt…."* The plaintiff instructed his solicitors that he had never given such a history to the Medical Panel. His solicitors sought review of the Medical Panel decision on the grounds that it had taken into account an irrelevant consideration, namely an incorrect

history in forming its opinion. No one opposed his application. His Honour Justice Kyrou found that the Panel had in fact taken an incorrect history which materially impacted on the opinion and so quashed it. There are a number of other decisions which deal with the question of the Medical Panel taking incorrect history, see *Cladingboel v Newcrest Mining Limited* [2007] VSC 345 and *Tralongo v Malios and Others* [2007] VSC 239.

14. The first task then is to scan the reasons to ensure that they are factually accurate and accord with the history that your client has informed you of. This is not only relevant for the plaintiff lawyers but also for those representing defendants, particularly in medical law cases.

15. In medical law matters it is the health provider that is responsible for the referral to the Medical Panel, s.28LWE. Under the *Wrongs Act* the respondent medical provider must provide to the Medical Panel certain information and also set out the "medical question" to be answered, s. 28LZA. In its certificate of opinion The Medical Panel must "*state whether the degree of impairment resulting from the injury satisfies the threshold level…*", s. 28LZG(4). A real question arises from the words "**resulting from the injury**" as in many medical law matters the Plaintiff's complaint is that there has been a failure to diagnose or treat that has made a pre-existing condition worse.

16. The decisions of *Chua and Melbourne Health and Others v Lloyd and Others* [2009] VSC 370 and *Chua v Newman-Morris* [2009] VSC 582 seem to suggest that it is the duty of the referring party to properly identify the relevant injury to be assessed. As Pagone J stated in *Chua* at [5] "*…what the medical*

panel needs to do is evaluate, as best it can, the degree of impairment referrable to the injury that might be the subject of a claim for damages for non-economic loss." To this extent if the history taken by the Medical Panel is incorrect and it materially affects the identification of the injury being claimed and assessed then grounds for review for jurisdictional error will be open.

17. It is not every factual inaccuracy that will give rise to a successful judicial review application. The consideration that it is alleged that ought to have been considered must have materially effected the decision for it to involve a jurisdictional error, *Minister for Aboriginal Affairs* (1986) 162 CLR 24 at 39, see also in the Medical Panel context *Moyston Court Fisheries Limited v Dr John Malios and Others* [2007] VSC 518 at [43].

(B) PROCEDURAL FAIRNESS

18. *"A person likely to be affected by an administrative decision to which requirements of procedural fairness apply can support his or her case by appropriate information but cannot complain if it is not accepted. On the other hand, if information on some fact personal to that person is obtained from some other source and is likely to have an effect on the outcome he or she should be given the opportunity of dealing with it" Kioa v West* [1985] 159 CLR 550 587 (Mason J) 628 (Brennan J).

19. In the decision of *Weerappah v Nisselle* [1999] VSC 249 a worker had suffered an electric shock during the course of her work at the Alfred Hospital on 1 September 1992. As a result of the electric shock she noticed numbness in her right hand. She attempted various returns to work but eventually ceased work in 1995 and did not work again by reason of right

hand pain. In mid 1998 the insurer terminated the plaintiff's weekly payments. During the course of conciliation in August 1998 the conciliator decided to refer the issues of injury and incapacity arising from injury to the Medical Panel. The referral was made without the knowledge of the plaintiff's solicitor. Documents were forwarded to the Medical Panel by the conciliator directly including a video tape which, I assume, showed the plaintiffs ability to use her right hand. The Medical Panel received all this information but at no stage communicated with the plaintiff to advise her or her solicitor of all the material it had and what it proposed to rely upon. The Medical Panel duly examined the plaintiff and provided its opinion. The opinion was not favourable to the plaintiff worker and she issued Order 56 proceedings seeking a review of the Medical Panel decision on the grounds that she was not afforded procedural fairness in that she did not get to make submissions as to the video which the Medical Panel viewed. Smith J stated at [45], "*.... the fact was that the video constituted a significant piece of evidence as to which neither the plaintiff or the insurer had commented or led any evidence. It was evidence of the kind that a Panel should not consider acting upon without first inviting the parties to attend and comment or lead other evidence about it."*

20. Since the time of *Weerappah* obviously the Panel now has very strict guidelines as to how to deal with material it has received. For example the Panel will invariably specify to the parties which material it has in its possession at the time of assessing the plaintiff. Similarly that list will be attached to any opinion so that the parties at least understand the basis on which the decision has been made. However at times things arise during the course of the Panel's reviewing of the material or examination of the

plaintiff. New factors can arise which are completely unknown to another party until such time as the Medical Panel opinion and reasons lands on their desk. An example of this occurred in the case of *Sodexho v Rowe & Ors* [2009] VSC 298. Ms Rowe was a worker who developed a chemical hypersensitivity to certain cleaning agents. She went off work and was in receipt of weekly payments and medical expenses. She was then terminated from her weekly payments on the basis that she had a capacity for work. She challenged this determination. The matter was referred by a Magistrate on the insurer's request to the Medical Panel. The live issue before the Panel was whether or not Ms Rowe had a capacity for work - which focused on what suitable employment duties there were available for her. At the time of the referral Ms Rowe was not working and none of the medical reports contained a history of her working. At the time she attended at the Medical Panel however she had in fact begun a part time job. This was not known to the insurer at the time. The first they became aware of her part time work was when they received the Medical Panel opinion and also the reasons. Curiously even though she was in part time work the Panel opinion stated that she did not have a capacity for work because the work that she was in fact performing could not constitute suitable employment; it was rather just a made up job. Nevertheless the reasons that the Panel provided stated that the plaintiff was in fact working a part time casual job. This was the first time that the insurer had knowledge of this.

21. Proceedings were issued seeking judicial review on the basis that procedural fairness had not been accorded to the insurer as they did not know any of the terms of the engagement of the plaintiff in work, how

long it had been going on for and what exactly it involved. The insurer was successful in overturning the Panel opinion. One of the authorities in support of the insurer's position at trial in the Supreme Court was Smith J in *Weerappah* who had stated in *obiter dicta* at [50] *"…for example in the course of a medical examination, the worker may reveal information of which the insurer is unaware and which may, if accepted, entitle the worker to the compensation that he had been denied. It would be a denial of natural justice for the insurer not to have an opportunity to address that information before the Panel reached its decision."*

(C) UNREASONABLENESS

22. A decision that is so unreasonable that no reasonable decision maker could come to it is potentially reviewable, *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 at 230, 233. However a review is confined to challenges to the exercise of a Tribunal's discretion, *Re Minister for Immigration and Multicultural Affairs; ex parte Applicant S20/2002* (2003) 198 ALR 59.

23. A closely allied ground arises where a challenged decision was "*irrational, illogical and not based upon findings or inferences of fact supported by logical grounds" S20* at [34] and [37].

(D) INADEQUACY OF REASONS

24. Traditionally where a party seeking judicial review could show that the reasons of the Medical Panel were inadequate, mainly in that they stated conclusions rather than indicating how the panel had come to reach a particular conclusion, then the opinion itself could be quashed, *Moyston Court Fisheries* at [81]. However there has been significant activity during 2013 regarding (a) when a Medical Panel has to provide reasons, (b) the quality of those reasons and (c) the consequences of providing inadequate reasons.

***WINGFOOT AUSTRALIA PARTNERS PTY LTD & ANOR V EYUP KOCAK & ORS* [2013] HCA 43**

***COLQUHUON & ORS V CAPITAL RADIOLOGY* [2013] VSCA 48** and subsequent HCA Special Leave Application.

25. The importance of each case lies not in its facts but in the various court pronouncements about the obligations on Medical Panels and the effect of their decisions.

26. The decision in *Kocak* arises from a workplace accident. Kocak had hurt himself at work, in 1996. On his version of events after an initial flare-up it settled down but flared up in a major way in May 2009. The Plaintiff sought to link the two events: 1996 and 2009. He put in a Workcover claim which was rejected. He started Magistrates Court proceedings. At that point the issue of whether the 1996 and 2009 injuries were linked was referred to the Medical Panel. The Medical Panel answered "No" to that question. When the Medical Panel Opinion was returned to the Court the

parties by consent agreed that the worker's proceedings ought to be dismissed as the Opinion had to be applied.[1]

27. Meanwhile the worker had started his serious injury proceedings in the County Court. The VWA argued that the Medical Panel Opinion from the Magistrates Court was binding on the County Court: that the 1996 and 2009 injuries could not be linked and therefore the 2009 injury did not arise out of or in the course of the workers employment. In response the worker sought to overturn the Medical Panel Opinion by reason of an attack, under Order 56 of the Supreme Court Rules, primarily on the basis that the Medical Panel's Reasons were inadequate in that they hadn't shown why they disregarded the Plaintiff's expert neurosurgical opinions. It was an attack on the Reasons.

28. By the time of the Victorian Court of Appeal hearing the VWA had stunningly changed its position and argued that the Medical Panel Opinion did not bind the County Court. The issue between the parties came down to:

    (a) What was the quality of the Reasons the Medical Panel had to provide?;
    (b) What happens if the Medical Panel provides reasons which are deficient? Does the Court order further reasons or quash the opinion itself and send the entire thing back to the Medical Panel?

29. Passing over what the Court of Appeal said the High Court answered the questions in the following manner:

    (a) The Medical Panel, in *Accident Compensation Act* matters, must provide reasons "*…adequate to enable a Court to see whether the*

1 *Accident Compensation Act* 1985 (Vic) s.68(4).

decision does or does not involve any error of law".[2] The reasons must *"…explain the actual path of reasoning by which the Medical Panel in fact arrived at the opinion the Medical Panel in fact formed on the medical question referred to it."*[3]

(b) As to the effect of a failure to meet the standard of reasons required the High Court stated: *"…that failure of reasons given by a Medical Panel to comply with the statutory standard is now an error of law on the face of the record of the opinion of the Medical Panel, so that an order in the nature of certiorari is now available to remove the legal consequences of an opinion for which non – compliant reasons were given without the party seeking that order needing to rely on the statutory remedy provided by s. 8(4) of the Administrative Law Act."*

30. The effect of this decision however is confined to those matters arising under the *Accident Compensation Act*. As the High Court has said there is no principle of common law that requires the Medical Panel to give reasons. The obligation to give reasons arises **only by reason of statute**. However once the statute obliges reasons then a failure to provide adequate reasons becomes an error of law on the face of the record susceptible to an order for certiorari to quash the whole opinion and start again.

31. This then leads to the issue in the Special Leave application decided by the High Court in *Colquhuon.*

"On 7 April 2008, Mr William Colquhoun attended the Williamstown Hospital for the purpose of a radiological investigation. In the course of that investigation Mr Colquhoun fell from a hospital trolley to the ground, striking his head and fracturing the neck of his left femur necessitating hip replacement surgery. Following the surgery, Mr Colquhoun suffered vascular dementia and was placed

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2 *Kocak* at [49] citing from the *Administrative Law Act* 1978 (Vic) s. 8.

3 *Kocak* at [55]

in a nursing home, where he suffered a series of strokes. He died on 16 June 2009 after suffering a major stroke."[4]

32. As a result of the death of Mr. Colquhoun 4 members of his family sought to bring claims for non economic loss damages against the medical provider arising from their psychiatric injuries. To be entitled to obtain such damages however the Plaintiffs had to demonstrate that they had a "significant injury" within he meaning of the *Wrongs Act* 1958 (Vic). After referral of each of the claimants to the Medical Panel, the Medical Panel conducted examinations and provided its opinion as well as a set of Reasons. In each case the Medical Panel found that the claimant did not satisfy the threshold level.

33. In each case the claimant then instituted a challenge to the Medical Panel's Opinion arguing that the Medical Panel, inter alia, had provided Reasons which were inadequate and as such the Certificate of Determination itself had to be quashed and sent back to the Medical Panel for re-hearing in its entirety.

34. The Victorian Court of Appeal disagreed. It said that there was no obligation on a Medical Panel to provide reasons. If the Medical Panel chooses to provide reasons then that is a matter for them – unless they receive a specific request pursuant to s. 8 of the *Administrative Law Act.* However if a Medical Panel provides reasons, whether in response to a s. 8 *Administrative Law Act* request or of its own motion, any inadequacy in the reasons will not result in a quashing of the opinion.

35. The 4 Plaintiffs sought Special Leave. Such leave was refused on 13 December 2013.

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4 Taken from Osborn J's summation of the facts in *Georgiou & Ors v Capitol Radiology & Ors* [2011] VSC 158

36. There are now different sets of rules governing the effect of being able to demonstrate an inadequacy in the reasons of a Medical Panel.

TIME TO PROVIDE AN OPINION

37. Section 28LZG(3)(a) of the Act imposes a time limit of 30 days within which a medical panel must provide its determination as to whether or not the claimant has exceeded the threshold level. In the recent decision of *Mikhman* His Honour Justice Kaye considered that if a Medical Panel fails to provide its determination within this time then the decision itself was invalid and ought be quashed. *Mikhman* is under challenge in a decision of *Holloway*. However in the matter of *Ryan v The Grange at Wodonga Pty Ltd* [2013] VSC 135 Kyrou J made passing comment that *Mikhman* was incorrect in deciding that an opinion provided outside the 30 day time limit was invalid. This comment was not endorsed by the Court of Appeal who held that a a failure to provide the opinion within 30 days of the last appointment invalidates the opinion, *Ryan v The Grange at Wodonga Pty Ltd* [2015] VSCA 17.

REMEDIES

38. Usually if grounds exist to successfully review a decision the standard order is to quash the decision or in other words for certiorari to issue in respect of the opinion and an order for mandamus to require the Medical Panel to answer the questions again. Once the decision is quashed then the question arises as to whether the questions to be answered will be referred back to the originally constituted Medical Panel or to a freshly constituted Medical Panel. As Forrest J stated in *Moyston Court Fisheries* where to refer the same questions back to the same Panel would have an *"air of unreality"* to allow them to do a *"patch up job"* it will usually be the

case that the Court will order a newly convened Panel consider the questions.

39. If there is no opposition to a judicial review proceedings then the matter cannot be resolved by consent, see *Yulianti v Minister for Immigration & Multicultural Affairs* [2001] FCA 142 at [9]. Even if there is no proper contradictor the applicant will still have to prove to the Court that they are entitled to the Orders that they seek, see *Ripper v Kotzman*. This is now usually done by way of the Joint Memorandum process set out, see Practice Note 9 of 2015 at [6].

COSTS

40. Costs will usually follow the event. It is rare however, that any costs will attach to the Medical Panel. Costs will only be awarded against the Medical Panel where it can be demonstrated that it has been *"guilty of serious misconduct or corruption or has acted perversely", Psychologists Registration Board of Victoria v the Herald and Weekly Times* [2000] VSCA 118 at [11]. Where a plaintiff worker has brought the judicial review application and the employer insurer has not opposed it is still likely that the insurer will have to pay the plaintiffs costs, see *Smith v Lloyd (2)* [2007] VSC 436 and *Ripper v Kotzman.*

41. If you are trying to defend a Medical Panel opinion but lose you are entitled to an Appeal Costs Certificate, *Ozkan v Leitch* (Ruling No 2) [2012] VSC 17.

FUTURE AREAS OF DISPUTE

42. The largest area of dispute is occurring in respect of s. 91 (7)(c) of the ACA, s. 54(2)(b) of the *WIRCA* and s. 28LL(3) of the *Wrongs Act* as to what constitutes "unrelated impairment". Defendants argue that only the injury that is referable to their alleged negligence ought to be assessed rather than the overall impairment flowing from the negligence. This poses significant problems for Plaintiff's in medical negligence matters and also asbestosis matters. For example in medical law matters there is often a situation where numerous doctors fail to diagnose a progressive condition. When the Plaintiff pleads their case each of the doctors seeks to argue that the Medical Panel must only assess the consequence of their negligence and exclude the consequences of the other doctors who have also failed to diagnose the condition. The primary argument against such an approach is based on *Chua*: that there is no injury capable of being assessed for impairment arising from a failure to diagnose at a particular time.

Arushan Pillay

Joan Rosanove Chambers

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MEDICAL PANEL CHECKLIST

1. **Time for referral**

   28LT material and certificate – referral by the Respondent within 60 days 28LWE.

2. **Question for referral**

   "…a question as to whether the degree of impairment resulting from injury to the claimant alleged in the claim satisfies the threshold level". 28LB.

3. **Halting a referral**

   Redline Towing – writ of Mandamus is available.

4. **The matter referred – Physical/Psychiatric**

   Where both alleged – both assessed, *Mitchell v Malios.*

   Where one referred only one assessed.

5. **The Medical Panel convened**

   Does the Medical Panel have the correct specialists with the correct training to perform the assessments, *Berry v Lowthian.*

6. **Time within which Opinion provided – 30 days of last MP appointment, 28LZG**

   The Grange currently says that if there is a failure to provide the Opinion within 30 days of the last Medical Panel examination then the Opinion is invalid.

7. Time to bring an Order 56 appeal = 60 days.

Time starts to run from the day the Opinion is signed.

8. Grounds of Appeal:

(a) Is the history of the Plaintiff taken correctly;

(b) Could the wrong history have materially effected the decision;

(c) Did the MP use the right part of the Guides?

(d) Is the particular chapter, section, table and example set out in the Guides applied correctly?

(e) Is the arithmetic used right?

(f) Do the reasons support the findings?

(g) Are the MP of the appropriate speciality and are they trained in the particular chapter of the Guides?

(h) Do the reasons stack up? Do they make you wonder how any reasonable person could have come up with the decision?

9. Result of successful appeal?

Matter is referred to the Medical Panel (or a freshly constituted Medical Panel) for re-assessment.

10. Appeals Cost Certificate

If you are the opposing party and you lose defending the Medical Panel Opinion then you can be reimbursed your costs *Ozkan v Leitch* (2).