

# SUPREME COURT OF QUEENSLAND

CITATION: *Andersen v Aged Care Employers Self Insurance* [2011] QSC 101

PARTIES: **VERA ANDERSEN**  
(applicant)  
**v**  
**AGED CARE EMPLOYERS SELF INSURANCE**  
(respondent)

FILE NO/S: BS2266/11

DIVISION: Trial Division

PROCEEDING: Originating Application

DELIVERED ON: 5 May 2011

DELIVERED AT: Supreme Court, Brisbane

HEARING DATE: 24 March 2011

JUDGE: Dalton J

ORDER: **Declare that the applicant is entitled to seek damages for the injury the subject of her notice of claim dated 2 August 2010, as changed by her statutory declaration sworn 9 March 2011, pursuant to s 237(1)(a)(i) of the *Workers' Compensation and Rehabilitation Act 2003*.**

CATCHWORDS: Workers' Compensation; injury; event; date of injury allocated by insurer on notice of assessment; insurer's role in giving notice of assessment; mistake as to date of event causing injury; one injury two possible events.

*Workers' Compensation and Rehabilitation Act 2003* (Qld) s 31(1), s 32(1), s 37, s 178, s 179, s 179(1), s 179(2), s 185, s 185(1), s 185(3), s 237, s 237(1)(a)(i), s 237(1)(d), s 258, s 275, s 276(8), s 277, s 281(4), s 302(1)(a)(i).

*Castillon v P&O Ports Limited* [2006] 2 Qd R 220, [30]  
*Dowd v Swift Australia Pty Ltd* [2008] QCA 228, [9],[10] and [13]

*Gorry v Australian Meat Holdings Pty Ltd* [2008] 1 Qd R 354, [30]

*Kelly v Croft Sheet Metal Manufacturing Pty Ltd* [2002] QSC 412, [16], [17] and [19].

COUNSEL: GJ Cross for the applicant  
K Holyoak for the respondent

SOLICITORS: Colin Patino & Company for the applicant  
Bruce Thomas Lawyers for the respondent

- [1] **DALTON J:** Ms Andersen hurt her back working in a nursing home in August 2007. She lodged an application for worker's compensation dated 31 August 2007. It went to the respondent (ACES), a self-insurer under the *Workers' Compensation and Rehabilitation Act 2003 (Qld) (WCRA)*. The application stated that Ms Andersen did not know what caused her back injury, but she suggested two events which may have caused it: one on 22, and one on 23 August 2007. Ms Andersen received compensation for time off work and medical expenses. However, when she issued a notice of claim pursuant to s 275 of the *WCRA*, ACES said she was claiming in relation to two injuries, one suffered on 22, and one on 23 August 2007. It said that because its notice of assessment given under s 185 of the *WCRA* put the injury at 23 August, she had no right to claim for an injury which occurred on 22 August 2007. Furthermore, ACES said Ms Andersen had not worked on 22 August 2007. Ms Andersen accepts she was mistaken, and that the earlier of the two events she originally suggested may have caused injury must have occurred on 20 or 21 August 2007. ACES conceded that Ms Andersen is not out of time for a claim for an injury occurring on 18-21 August 2007 because of the operation of the terms of an agreement of 18 August 2010, and the operation of ss 276(8) and 302(1)(a)(i) of the *WCRA* (see below). ACES says if she wants to claim in relation to an injury occurring on 20 or 21 August 2007, Ms Andersen must ask for that injury to be assessed under s 178 of the *WCRA*. Ms Andersen seeks a declaration that the injury which she claims has already been assessed.

### **History of the Claims for Compensation and Damages**

- [2] The application for compensation dated 31 August 2007 described the injury in respect of which claim was made as an L5/S1 prolapsed disc. The section of the form which asked when the injury happened was left blank. At the section of the form which asked whether the injury happened over a period of time, Ms Andersen put a tick against neither the response, "yes", nor the response, "no". That question went on to ask, "If yes when did you first experience symptoms?" Ms Andersen left this blank. The second follow up question was, "When did you first see a doctor?" Ms Andersen wrote, "27.8.07". On 4 September 2007 ACES wrote to Ms Andersen saying it had received her application and allocating it a number, 08PINNH001.
- [3] There is a second copy of the application form on the ACES file. It bears a receipt stamp of 12 September 2007, whereas the first copy bears no receipt stamp. It is clear from the handwriting on the two forms that the second comprises identical pieces of paper to the first, with additional details added. These state that the injury happened on 23 August 2007. Against the question, "Did your injury happen over a period of time?", the response, "no" has been ticked. Then, inconsistently with this, when the form continues, "If yes, when did you first experience symptoms?", a response has been written, "It was niggling on 22.8.07". At the question, "How did the injury happen?", there is an explanation: "Bending down put stockings on and putting trousers on resident and got up and pinching down right leg from top of back". There is no explanation as to how there came to be two versions of this form.
- [4] On 5 September 2007 a claims officer from ACES took a statement from Ms Andersen. Ms Andersen signed it on 11 September 2007. It read in part:

- “b. My back had been niggling on Wednesday 22 August 2007. By niggling I mean that there was a pinching feeling down the lower part of my back, through my buttocks cheek and down my right leg. It was like sciatic nerve – as I moved the wrong way, it pinched.
- c. There was one resident that we got out of bed and she is a biggish lady. She sits on the side of the bed and we stand transfer her into shower chair ...
- d. As we turned her, we turned her to the right ...
- ...
- f. My condition was niggling at that time. I first felt the niggling when I moved to the right to sit her in the shower chair. The niggling continued for 10 or 20 minutes.
- g. I really don't know if that caused my injury. I had no symptoms after about 20 minutes and I had no symptoms at all overnight.
- ...
- i. On the following day, 23 August 2007, my first resident of the day was Bill Fraser. I was alone with Bill as he is a one person transfer. It was about 6:15am then. It takes about 20 minutes in total, to assist Bill. He is a medium sized man and can weight bear. He can walk himself to the shower and washes himself. We assist him with the showering and put creams on his back.
- j. Through the showering, I felt no symptoms.
- k. After the shower, I bent down to put on his stockings and his trousers.
- l. I was fully crouched down with my right knee on the ground. My other leg was at right angles at the knee and the foot was on the ground. Bill was sitting on the side of the bed.
- m. I went to get up after I put Bill's trousers, stockings and shoes on, and I felt pinching in my lower back and down my right leg.
- n. There was pain in the lower back just above the buttocks cheek. It was an aching pain. There was pinching down through my right leg only. I could walk but it was pinching and I still had pain in the top of the lower back.
- o. I really don't know if that caused my injury.” (my underlining)

- [5] Ms Andersen's statement continued that her back gave her pain throughout that shift; that she left early, took some Panadol and lay down. She worked again on 24 August 2007 and still experienced pain. She rested over the weekend but the pain remained the same. The statement continues:
- “ee. By the Sunday night, I had had enough and called in sick for Monday. ...
  - ff. I went to the doctor on Monday afternoon.
  - gg. I saw my physician, Dr Ng on 27/8/2007 and he initially provided a non-workers compensation certificate. He gave me a doctor's certificate for Monday and then I rang Amy at work and she told me that I had to get a clearance to return to work. So I went back to the doctor on Tuesday ... he asked me to go for a CT scan ... so I went Thursday. He gave me a certificate for all of the previous week and I went back on 30/8/07 with the CT scan. That is when he diagnosed that I had a prolapsed L5/S1 disc. That is when he put it through as workers compensation.
  - hh. My usual physician is Dr Ng.
  - ii. The treatment I have undertaken with this injury includes Panadol and Panadeine Forte.
  - jj. Dr Ng referred me for the CT scan but there are no other referrals at the moment.
  - kk. My current symptoms are still the pinching down the back of the leg and the pain in the lower back. ...” (my underlining)
- [6] On the ACES file is a note dated 31 August 2007 signed by Amy Leschke, one of Ms Andersen's co-workers. The note says:
- “Around 20 or 21 August Vera complained of having a sore back. On Thursday 23 August she came to me and advised she would be swapping shifts and times ... as her back was hurting. She finished at 12:30 on this day. Vera worked her full shift on Friday 24 August 2007. Vera called in sick for the shift of Monday 27 August ...”
- [7] There is a similar note dated 10 September 2007 from Ms Leschke, which states:
- “On 21 August 2007 asked Vera to work 23:59-06:44 shift in nursing home as she had expressed interest in working this shift as she does not work the second Wednesday of the roster, which would have been 22 August 2007. She stated that she wasn't able work this shift as she had to take her father, who is in Bundaleer Nursing Home in Ipswich, to a doctor's appointment. She has mentioned on numerous occasions that she takes him to appointments on the Wednesday she doesn't work. ...”
- [8] On 4 October 2007 ACES had Dr McPhee examine Ms Andersen. Dr McPhee says, “The claimant's file was available at the time of examination. These documents have been perused and taken into consideration when providing the following

opinion”. I assume from this that at least the statement made by Ms Andersen dated 11 September 2007 was perused by Dr McPhee. Dr McPhee says:

“Ms Andersen states that on 23 August 2007 she had been crouching down to put compression stockings on a resident. As she went to stand up she was aware of sudden pain in her lower back and right leg ...

When her symptoms did not settle she saw her general practitioner on 27 August. She was certified incapacitated for work and referred for a CT scan. She was off work for two weeks during which time she had no treatment. ...

There is a complaint of right buttock pain which radiates down the back of the left [sic] thigh to the knee. It does not extend below the knee. ...

A CT scan of the lumbar spine done on 30 August 2007 shows advanced degeneration in the lumbosacral disc. ...

The radiological studies show advanced degeneration of the lumbosacral disc with a long standing disc bulge which is calcifying. These changes do not represent a recent injury. As a result of the incident described which occurred during the course of her work, I believe Ms Andersen probably suffered a strain of her lower back with aggravation of pre-existing degeneration of the lumbosacral disc. The circumstances constitute an injury. ...” (my underlining)

- [9] Presumably in response to Dr McPhee’s report, ACES wrote to Ms Andersen on 18 October 2007 accepting her application for workers’ compensation numbered O8PINNH001 and saying:

“... ACES has accepted your claim for compensation for strain of lower back with aggravation of pre-existing degeneration of the lumbosacral disc sustained on 23 August 2007 and will pay expenses from 27 August 2007, being the date you were first assessed by a physician.

Please note that ACES is liable for treatment for the aggravation only. ACES is not liable for the pre-existing degeneration or the pre-existing disc bulge ...

Any compensation payments to which you are entitled, will be made by direct debit into your nominated account ...

Continuing compensation will be paid fortnightly in the normal pay cycle ...

ACES will pay reasonable treatment costs for your injury for the period covered by workers’ compensation medical certificates. The claim will continue whilst there is current certification and the incapacity remains a result of the work-related condition.”

- [10] Ms Andersen says she consulted solicitors in April 2010 as her back continued to cause her problems. On 28 May 2010 they wrote to ACES referencing the letter with their client's name; the WorkCover reference 08PINNH001, and "Date of Injury: 23 August 2007". They ask ACES to arrange for Ms Andersen's injury to be assessed for permanent impairment. On 15 June 2010 ACES asked Dr Martin to examine Ms Andersen to assess her permanent impairment in relation to claim 08PINNH001. The letter of instruction said:

"Claimant submitted a ... claim consequent to an alleged event on the 31/08/2007 [sic]; this claim was accepted for a strain of lower back with aggravation of pre-existing degeneration of the lumbosacral disc.

She has described the event as follows:

'Bending down put stockings on and putting trousers on resident and got up and pinching down right leg from top of back'. (application for compensation dated 31/08/2007). Claimant suggests the nature of injury is a L5/S1 prolapsed disc.

Please also refer to the attached claimant's statement dated 11/09/2007 which further describes the event.

...

Ms Andersen states in her statement that her back had been niggling on Wednesday 22/08/2007. It is interesting to note that Ms Andersen did not work that day which has been confirmed on her work roster and also claimant's worksite."

- [11] Dr Martin gave a report dated 5 July 2010. He had the statement Ms Andersen made on 11 September 2007 and the file notes of Ms Leschke. Dr Martin says:

"Ms Andersen says that she injured her back with RSL in August 2007. The date of injury was 22 August 2007 when her back started niggling. She sought medical advice on 27 August 2007. Investigations were carried out and she was certified as totally incapacitated from 27 August 2007 until 9 September 2007. She was assessed by Orthopaedic Surgeon Dr Bruce McPhee on 4 October 2007. Dr McPhee formed the opinion that there was pre-existing degeneration in the lumbar spine which had suffered exacerbation on account of employment. He thought the alleged incident made a minor contribution to her condition. ..." (my underlining)

- [12] Dr Martin agrees with Dr McPhee saying:

"As stated by Dr McPhee, Ms Andersen was suffering from an exacerbation of symptoms from a pre-existing degeneration of her lumbar spine. Contribution to her condition from workplace activity was minimal. Accordingly, there was no assessable permanent impairment attributable to her employment with RSL Care." (my underlining)

- [13] Dr Martin assessed the permanent impairment as zero per cent.

- [14] On the basis of that report, ACES issued a notice of assessment dated 5 July 2010 pursuant to s 185 of the WCRA which stated the claim number, 08PINNH001; the

date of injury as 23 August 2007; the injury as, “exacerbation of symptoms from pre-existing degeneration of lumbar spine”, and the percentage of permanent impairment attributable to the injury as zero.

- [15] Ms Andersen then issued a notice of claim for damages pursuant to s 275 of the *WCRA* dated 2 August 2010. On that notice of claim against the notation, “Date of injury (for limitation period purposes)”, was the date “22/08/2007”. There was no response to the question, “If the injury occurred over a period of time, provide reasons for the above date:”. In response to a printed notation, “Date and time of event”, was, “22/08/2007 and 23/08/2007”. The injury was described as a back strain. It was stated that a notice of assessment had been received.
- [16] Solicitors acting for ACES agreed to expedite matters because the limitation period was soon to expire, and on 18 August 2010 they waived the need for a complying claim on conditions. One condition was that Ms Andersen make a statutory declaration as to the circumstances in which her injury occurred. Another was that she undergo examination by Dr Labrom. As to the first requirement, Ms Andersen swore a statutory declaration verifying her statement of 11 September 2007.
- [17] On 31 August 2010 ACES sent a letter of instruction to Dr Labrom. It stated:  
“[Ms Andersen] sustained a back injury on 22 August 2007 and 23 August 2007 as a result of caring for residents.

The claimant provided a statement advising she sustained her injury as follows:

**First incident – 22 August 2007**

The claimant reported that she experienced ‘niggling’ pain when she commenced work with the employer. The claimant stated she recalls that the claimant and a co-worker assisted a resident to transfer from bed to a shower chair. However the claimant does not report any specific symptoms experienced during that activity. She stated that her symptoms resolved over a few hours.

Please note that the employer disputes that the claimant sustained injury on 22 August 2007 as she did not attend work on that day.

**Second incident – 23 August 2007**

The claimant lodged an application for compensation dated 31 August 2007 claiming that she sustained a back injury on 23 August 2007 [sic] as a result of [sic] rising from a bent down position after putting the shoes and socks on a resident.  
 ...” (my underlining)

- [18] The letter of instruction, which is six pages long, asked a series of questions, four about, “the first incident – 22 August 2007”, and another four about, “the second incident – 23 August 2007”. Dr Labrom provided a report dated 7 September 2010. He had been given the earlier reports of Dr McPhee and Dr Martin. In relation to those he says:  
 “I note [Dr McPhee’s] opinion that Ms Andersen has suffered an aggravation of pre-existing degenerative disease in the lumbar spine as a result of the accident occurring on the 23 August 2007. ...

Dr Martin in the same way diagnoses Ms Andersen as having a temporary exacerbation of her pre-existing degenerative spine condition.”

- [19] Dr Labrom reported that Ms Andersen told him, “her troubles began on both the 22 August 2007 and on the 23 August 2007.” He essentially then recites what Ms Andersen had said in her statement of 11 September 2007. He notes the controversy as to whether Ms Andersen worked on 22 August 2007 and says she “adamantly confirms” she was at work that day. ACES had still not informed Ms Andersen of what they had known since September 2007: she had not worked on 22 August 2007 but had worked on 21 August 2007. Because he was asked to consider the incidents of 22 and 23 August 2007 separately, Dr Labrom did so. Nonetheless, he concludes in almost identical terms that the symptoms experienced on the 22 and 23 August 2007 were as a result of a temporary exacerbation of pre-existing severe lumbo-sacral spondylosis. In neither case did he think there was any measurable impairment associated with the injury. His diagnosis was the same as those of Drs McPhee and Martin.
- [20] Meanwhile, on 6 September 2010 solicitors acting for ACES took the point which has resulted in this application. They wrote saying that the notice of claim claimed damages in relation to an “incident” that occurred on 22 August 2007 and asserted that Ms Andersen had not previously lodged an application for compensation for that “injury”. They concluded she was reliant on s 237(1)(d) of the *WCRA* in relation to what they said was a separate allegation of injury occurring on 22 August 2007. In turn, this entitlement was subject to ACES determining whether or not Ms Andersen had sustained an injury on that day pursuant to s 258 of the *WCRA*. On 8 November 2010 ACES purported to assess, “The claimant’s claim for damages for unassessed injury sustained on 22 August 2007 in the notice of claim for damages”. The decision was that there had not been any injury within the meaning of the Act on 22 August 2007 because Ms Andersen did not attend her workplace on 22 August 2007. On 10 November 2010 solicitors acting for ACES delivered a response pursuant to s 281(4) of the *WCRA* to the notice of claim served by Ms Andersen. It denied liability because, “the claimant does not have an entitlement to seek damages for any injury allegedly sustained on 22 August 2007”. It denied liability for any injury sustained on 23 August 2007 on other grounds.
- [21] The work roster for August 2007 was provided to Ms Andersen’s side for the first time on 24 February 2011. Ms Andersen accepts that the roster shows she did not work on 22 August 2007. She now thinks she first suffered the niggling symptoms on the working day before, 21 August 2007, or possibly 20 August 2007. In this regard, her counsel points to Ms Leschke’s note which states that on 20 or 21 August Ms Andersen complained of having a sore back.

### **Provisions of the *WCRA***

- [22] Unless a worker can bring themselves within the provisions of s 237 of the *WCRA*, they cannot claim damages. Here ACES says, because its notice of assessment states the date of Ms Andersen’s injury was 23 August 2007, only in relation to an injury of that date has she been assessed. In respect of an injury occurring on that date only, is she within s 237(1)(a)(i) and may make a claim for damages. Further, it says Ms Andersen claims in relation to two injuries. I reject these contentions of ACES. They rest on a confusion between the concepts of injury and event as

defined by the *WCRA*; they also mistake the role of an insurer which issues a notice of assessment.

- [23] The *WCRA* defines “event” as, “anything that results in injury” – s 31(1); “injury” as, “personal injury arising out of, or in the course of, employment” – s 32(1), and “impairment” as, “loss of efficient use of any part of a worker’s body” – s 37. An injury is not the means by which damage is inflicted, but is the effect on the person of the worker of an event, as can be readily seen when the schedules to the *WCR Regulation* are perused. In common parlance one might speak of being injured by lifting a heavy load. But in terms of the *WCRA* definitions, lifting the heavy load is the event, the injury is what results from that, say a back strain.
- [24] Ms Andersen’s application for compensation was for one injury within the meaning of the *WCRA*. That injury was described by her as “L5/S1 prolapsed disc” and ACES accepted it as a “strain of lower back with aggravation of pre-existing degeneration of the lumbosacral disc”, in accordance with the description of its doctor, Dr McPhee. Ms Andersen’s statement of 11 September 2007 was manifestly about one injury, as defined, see the underlined parts extracted above. It described one set of symptoms: pain in her lower back and down her right leg, first temporarily, and then more permanently. It described her attendance on her doctor for that injury when the pain from it persisted, and the doctor’s diagnosis of it. The statement says that Ms Andersen did not know what had caused her injury, but suggested two events within the meaning of the *WCRA* – on 22 and 23 August 2007 – as possibilities. Dr Martin thought the earlier event the likely cause; Dr McPhee, the later. The point is, both of them assessed one injury, and this is evident from the underlined parts of their reports, above.
- [25] Counsel for ACES made much of the letter from Ms Andersen’s solicitors requesting assessment for permanent impairment because it contained, “Date of Injury: 23 August 2007” in the introductory reference. Nonetheless it was clear from that same introductory reference that the letter referred to claim 08PINNH001 which, as already described, was for one back injury which Ms Andersen thought may have been caused by events on 22 or 23 August 2007. In the same category as that letter, are the additional details on the second version of the form of application for compensation which put the date of injury at 23 August 2007, but with a description of niggling on 22 August 2007. Looked at in the context of all the material available to ACES as at the date of assessment pursuant to s185 of the *WCRA*, the only reasonable view of Ms Andersen’s claim was that Ms Andersen made a claim for one injury, to her back, which she suggested, but did not definitively assert, may have been caused by events which occurred on 22 or 23 August 2007. She did not assert two injuries, nor did she assert one injury caused solely by an event on 23 August 2007.
- [26] Dr Labrom’s report was obtained after the notice of assessment was given to Ms Andersen. He reported on two “incidents” because he was asked to do so. However, the underlined parts of his instructions above show clearly that what he was being asked to assess was one injury. He was asked what caused the symptoms on 22 August and said it was the activity described by Ms Andersen to have taken place on 22 August. Likewise as to 23 August. The artificiality of this exercise is revealed by:
- (a) His recitation of Ms Andersen’s history:

“Ms Andersen tells me her troubles began on both the 22 August 2007 and the 23 August 2007.... When asking Ms Andersen which was the worst of these two incidents, she suggested the first incident was the worst and the pain was then further exacerbated with the second incident.”

And:

“The history is listed above with reference to two particular dates, the 22 August and the 23 August 2007. The claimant acknowledges that the first incident was by far the more severe with regards the onset of back pain and she has referenced her current symptoms to these two particular events... She believes that these two events have made her pathology worse such that she has required spinal surgery.”

- (b) His virtually identical opinions as to the cause of the symptoms on 22 and 23 August 2007 – he thought they both arose from temporary exacerbations to the, “very severe pre-existing degenerate process affecting the L5-S1 disc space” he had earlier diagnosed.
- (c) The fact that his opinion as to the cause of Ms Andersen’s symptoms was virtually identical to the opinions of Drs Martin and McPhee who, unconstrained by leading instructions, each assessed one injury on the same factual history.
- [27] In the circumstances, I do not regard Dr Labrom’s report as showing that at any time Ms Andersen claimed, or indeed that there were, two injuries within the meaning of the *WCRA*.
- [28] Under s 179(1) of the *WCRA*, it was the injury complained of by Ms Andersen which was to be assessed by ACES to decide if it had resulted in permanent impairment. Under s 179(2) a doctor (here, Dr Martin) was to assess the degree of any permanent impairment. Once it had received an assessment from the doctor, ACES was to issue a notice of assessment which was to state, *inter alia*, whether, and to what degree, Ms Andersen had sustained a permanent impairment by reason of her back injury – s 185(1) and (3) of the *WCRA*. Under these provisions of the *WCRA*, ACES’ task in issuing a notice of assessment was to assess injury and impairment, not to make findings about what events caused the injury or the date those events might have occurred.<sup>1</sup> ACES was not entitled to allocate a date as the date of the event causing injury when the claimant did not assert it;<sup>2</sup> the factual material before it did not justify it,<sup>3</sup> and where that date contradicted the view of the doctor (Dr Martin) who had assessed the degree of permanent impairment on its behalf.
- [29] ACES cannot use its allocation of the date 23 August 2007 as the date of injury to limit the substance of what was assessed pursuant to s 179 of the Act. Nor can it use the fact that the notice of claim specifies two events, one on 22, and the other on 23 August 2007, to say that the notice of claim is in relation to two injuries. The notice of claim is consistent with what Ms Andersen has always asserted, she suspects there were two events which caused her injury. I find that Ms Andersen’s claim for compensation, O8PINNH001, makes a claim for one injury. The impairment resulting from that injury was assessed by Dr Martin on 5 July 2010,

<sup>1</sup> cf *Castillon v P&O Ports Limited* [2006] 2 Qd R 220, [30]; *Dowd v Swift Australia Pty Ltd* [2008] QCA 228, [9],[10] and [13].

<sup>2</sup> *Gorry v Australian Meat Holdings Pty Ltd* [2008] 1 Qd R 354 [30].

<sup>3</sup> *Kelly v Croft Sheet Metal Manufacturing Pty Ltd* [2002] QSC 412, [16], [17] and [19].

and the notice of assessment deals with that injury. I find that the injury which is the subject of the notice of claim dated 2 August 2010 is the same injury which is dealt with in ACES' notice of assessment dated 5 July 2007. Accordingly, Ms Andersen is entitled to seek damages for the injury the subject of the notice of claim because she has received a notice of assessment in relation to the injury the subject of that claim within the meaning of s 237(1)(a)(i) of the *WCRA*.

- [30] From the beginning Ms Andersen mistook the date of the earlier event she suspected might be causative of her injury. Almost from the beginning ACES knew this, and knew Ms Andersen had worked on 20 and 21 August 2007 and had complained of a sore back one of those days. What is the significance of Ms Andersen's mistake? There is no indication that it matters in the slightest to the assessment of the injury – see the identity of diagnoses of all three of ACES' doctors. Likewise, it does not change the fact that Ms Andersen's claim has always been in relation to one injury. The date of the mistaken event, 22 August 2007, was a date on which Ms Andersen did not work. She could not have suffered an injury from an event occurring on 22 August 2007 within the meaning of the *WCRA* on that date, because an injury within the meaning of the *WCRA* must be an injury arising in the course of employment. Nonetheless, the earlier of the two events described by Ms Andersen was an event which occurred at work. She simply mistook the date. Since discovering her mistake Ms Andersen has delivered to ACES a statutory declaration sworn 9 March 2011 setting out a change to the information in her notice of claim that the events giving rise to her injury occurred on 22 and 23 August 2007. Having regard to s 277 of the *WCRA*, I cannot see that she needs do more than this. The *WCRA* contemplates the provision of changed information pursuant to s 277, not by way of amendment such as would be made to a pleading.
- [31] The applicant has succeeded on the substance of her application. I will hear the parties as to costs.