SUPREME COURT OF QUEENSLAND

CITATION:	*Van Der Berg v Key Solutions & Anor* [2020] QSC 262
PARTIES:	**PETRUS STEFANUS VAN DER BERG** (applicant) **V** **KEY SOLUTIONS GROUP (A FIRM)** (first respondent) **WORKCOVER QUEENSLAND** (second respondent)
FILE NO/S:	SC No 768 of 2020
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Rockhampton
DELIVERED ON:	26 August 2020
DELIVERED AT:	Rockhampton
HEARING DATE:	17 August 2020
JUDGE:	Crow J
ORDER:	**1. The application is dismissed.**
CATCHWORDS:	WORKERS' COMPENSATION – DETERMINATION OF CLAIMS – APPEALS, JUDICIAL REVIEW AND STATED CASES – PROCEDURE – TIME FOR APPEAL OR REVIEW – where the applicant was awarded compensation at first instance by the insurer, WorkCover Queensland – where the respondent employer successfully reviewed the decision – where applicant denied compensation at second instance – where the applicant failed to apply for review within the statutory time limit - where, approximately 6 years later, the applicant seeks declaration to have the limitation period extended – whether there is a special reason for intervention by the court *Limitation of Actions Act* 1974 (Qld), s 31 *Workers' Compensation and Rehabilitation Act* 2003 (Qld), s 32, s 134, s 237, s 295, s 298, s 540, s 561, s 572 *Costello v Queensland Rail* [2015] 2 Qd R 296; [2014] QSC 83, followed *Forster v Jododex* (1972) 127 CLR 42; [1972] HCA 61, followed *Jacobs v Woolworths Ltd* [2010] 2 Qd R 400; [2010] QSC 24, considered *Otto v Mackay Sugar Ltd & Anor* [2011] QSC 215, followed

COUNSEL: A W Collins for the applicant
R J Douglas QC, with S J Deaves, for the respondents

SOLICITORS: Mobbs & Marr Legal for the applicant
Hall & Wilcox for the respondents

[1] On 28 July 2020, Mr Van Der Berg filed an application seeking the following orders:

1. Pursuant to s 31 of the *Limitation of Actions Act* 1974, the period of limitation for the action in respect of personal injury suffered by the Applicant over a period of time between 25 June 2013 to 27 June 2013 during the course of his employment be extended up to and including 60 days from the date upon which the Applicant complies with s 295 of the *Workers' Compensation and Rehabilitation Act* 2003.

2. A declaration that the Applicant suffered an injury within the meaning of s 32 of the *Workers' Compensation and Rehabilitation Act* 2003.

3. A declaration that the Applicant is entitled to an assessment of permanent impairment under Chapter 2, Part 10 of the *Workers' Compensation and Rehabilitation Act* 2003.

4. The Respondent pay the Applicant's costs of the application on a standard basis.

5. Such further or other orders as the Court considers appropriate.

[2] On 3 August 2020, orders were made granting the applicant leave pursuant to s 298 of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) ("WCRA") to commence proceedings against the first respondent for damages for personal injury allegedly suffered over a period of time between 25 June 2012 and 27 June 2013, despite non-compliance with s 275 of the WCRA.

[3] The granting of leave to proceed pursuant to s 298 of the WCRA is relevant to paragraph 1 of the originating application, insofar as the applicant needs to demonstrate a material fact of a decisive nature coming within the means of his knowledge in the year preceding 3 August 2020.

[4] The parties are in agreement that the declaratory relief sought in paragraph 2 of the originating application ought to be the first issue determined. It is agreed by the parties that, absent the declaration that the applicant has suffered an injury within the meaning of s 32 of the WCRA, the applicant is prohibited from bringing any common law personal injury claim in respect of his injuries pursuant to s 237(5) of the WCRA.[1]

[5] Furthermore, if the applicant is unable to satisfy one of the gateway provisions pursuant to s 237 of the Act, he is unable to establish a *prima facie* case as is required by s 31 of the *Limitations of Actions Act* 1974 (Qld).

Chronology

Date	**Event**
20 February 1968	Applicant born
June 2005	Applicant immigrates to Australia from South Africa.
4 April 2012	Applicant consults Dr Khan, general practitioner with rash to palm of left hand (said by applicant to be a "similar rash" to that suffered subsequently).
25 June 2012	Applicant commences employment as boilermaker, with KSG and uses chemicals in course of employment. Commences to suffer a rash shortly after employment.
27 June 2012	Applicant consults Dr Botha, general practitioner, in respect of rash developed.
27 August 2012	Rash, which had resolved with time off, recurs. Applicant consults Dr Botha and is referred to Dr Noakes, dermatologist.
6 December 2012	Applicant consults Dr Noakes. Rash on left hand had grown but now also on right hand.
Circa late 2012	Applicant informs Mr Scouller of KSG that he is having trouble with his hands, and requests and obtains from Mr Scouller the MSDSs for the chemicals used in his employment, and provides them, without looking at the same, to Dr Noakes.
27 June 2013	Applicant ceases active work with KSG.
8 – 12 July 2013	Applicant attends upon Dr Noakes for treatment on that and four

[1] *Kelly v WorkCover Queensland* [2002] 1 Qd R 496 at 497; *Watkin v GRN International Limited* [2007] 1 Qd R 389 at [20]-[26]; *A Top Class Turf Pty Ltd v Parfitt* [2019] 1 Qd R 390.

Date	Event
	subsequent days
22 July 2013	Applicant makes WCR Act application for compensation to WorkCover.
12 August 2013	Dr Noakes reports to WorkCover, that "I obtained his workplace material safety data sheets. As it appeared that a number of allergens may not have been covered, I organised a more extensive allergy patch testing series. Nonetheless, these were all negative. My plan was to manage him as endogenous dermatitis. Nonetheless his hand settled away from work and this would make the diagnosis an irritant contact dermatitis. Thus in reply to your question [the applicant] has an irritant contact dermatitis related to his work as a boiler maker."
19 August 2013	Applicant's compensation application accepted by WorkCover.
19 August 2013	Dr Noakes reports to WorkCover that "[The applicant's] problem is contact irritant dermatitis from cumulative exposure, both frictional and chemical, at work rather than a specific chemical to which he is allergic. Contributing exposures include masking tape, wood templates, plastic templates, sandblasting and welding."
21 August 2013	Dr Noakes again reports to WorkCover largely repeating content of above reports.
30 August 2013	KSG seeks review by Regulator covers decision to accept the applicant's compensation application.
13 September 2013	Applicant makes submissions to the Regulator
3 October 2013	After KSG sought WCR Act review by Regulator, WorkCover's acceptance set aside and issue of acceptance remitted to WorkCover for investigation and further decision.
23 October 2013	Dr Noakes reports to WorkCover "With irritant contact dermatitis, patients can return to work once the hand re-establishes barrier function. This generally occurs within about 4 to 6 months … it is difficult to prognosticate. Hand dermatitis, regrettably, tends to be a chronic condition for reasons that are not well understood. I have my suspicions that if Mr van der Berg returns to identical duties, the problem is likely to recur. He would probably be best served by finding employment where his hands are not subject to significant physical trauma.".
28 October 2013	Dr Noakes reports to WorkCover reporting "This is dermatitis relating to mechanical and environmental factors, such as heat, friction, dirt, dust, repeated washing, use of detergents etc. This condition would normally be expected to settle once barrier function of the hand is re-established".
5 November 2013	WorkCover, having investigated the matter and above report from Dr Noakes, rejects the applicant's compensation application, and advises applicant of same in writing with reasons.
8 January 2014	Applicant advised by Maurice Blackburn Lawyers, after having previously sought advice from them, that they were not prepared to

Date	Event
	act on a speculative basis in relation to the claim by the plaintiff against KSG.
21 January 2014	Applicant says he requests KSG to provide him with details beyond MSDSs and copy employment contract.
24 January 2014	Applicant applies in writing for review of Regulator of WorkCover's decision to reject his compensation application.
March 2014	Regulator affirms WorkCover's rejection of compensation application. In written reasons refers to above reports of Dr Noakes and contents of GP clinical notes, including entry of 26 July 2013 that the applicant "works as a boilermaker and started with Palmar Erythema and itch on left hand since beginning of 2012". Also quotes from applicant's statement concerning development of condition and his work in his wife's business, with exposure to spray paint and glass cleaner. Concludes that "there is no definitive evidence to demonstrate there is a causal connection between Mr van der Berg's bilateral dermatitis and his employment, I am not satisfied Mr van der Berg's injury arose out of or in the course of his employment and his employment is not a significant contributing factor to his injury". Advised appeal rights were "If either party disagrees with this decision then either party may appeal to the Queensland Industrial Relations Commission in Brisbane. Either party has 20 business days from the date of receipt of this decision in which to lodge an appeal. Copy of the notice lodged with the Commission should also be served on QComp within 10 business days. For information about the appeal process please contact me or refer to www.qcomp.com.au".
25 March 2014	Applicant had not worked in employment since 27 June 2013 – received show cause letter in respect of termination of employment.
9 April 2014	Final date for lodgement of appeal to QIRC.
15 April 2014	Applicant's employment with KSG terminated
30 June 2014	Applicant, in financial year ending this date, receives lump sum benefit from superannuation after tax of $33,360.
25 January 2015	Applicant applied for waiver or extension of time limit for appeal to QIRC. Thus then 241 days out of time.
11 March 2015	Applicant receives correspondence from Hall Payne Lawyers that he needed to succeed in the QIRC to overturn the rejection of the compensation application and that they were not prepared to act on a speculative basis in respect of an application for extension of time to the QIRC, or a common law claim for damages.
30 June 2015	Applicant receives, in the year ending this date, lump sum benefit from superannuation after tax of $47,724.
2 September 2015	QIRC, by Deputy President O'Connor, after hearing on 22 May and 23 July, refuses applicant's application for an extension of time in which to appeal to the QIRC.
30 June 2016	Applicant receives, in the year ending this date, income protection lump sum benefit in a sum after tax of $205,093.

Date	Event
30 June 2017	Applicant receives, in the year ending this date, a lump sum after tax from superannuation of $117,581.
Circa July 2017	Commences work as a truck driver and works for 3 months.
18 January 2019	Applicant lodges complaint with Workplace Health and Safety Queensland seeking to obtain from KSG MSDSs in relation to his employment.
5 April 2019	Applicant receives KSG's MSDSs in relation to chemicals and employment from Workplace Health and Safety Queensland. Note, as identified in applicant para 113 (a) to (e), but not (f), the same as held by Dr Noakes, as identified by Mr Bocas in para 6.
Circa May 2019	Applicant consults solicitors Mobbs & Meagher to seek advice "In relation to the conduct of Key Solutions Group withholding information from me". Applicant deposes "I felt strongly that my workers' compensation claim was not accurately assessed as Key Solutions Group did not disclose the relevant material safety data sheets or names of the products to WorkCover Queensland or myself at the time they were investigating whether my injuries had resulted during the course of my employment".
26 June 2019	Applicant advised by solicitors Mobbs & Meagher that he could only proceed with a claim for damages if the [Supreme] court made a declaration that he had suffered a WCR Act injury and that the court would not make such a declaration unless there was sufficient evidence to substantiate that the workplace was a significant contributing factor to the injuries".
11 November 2019	Applicant's solicitors obtain report from Dr Carol Adib, dermatologist – together with a subsequent report of 12 December 2019, where she opines: The likely cause of his irritant contact dermatitis injury is the recurrent prolonged exposure over his employment period to irritating chemicals. Protecta Grit was likely to be the most relevant chemical as it was used daily on bare hands several times a day, every day. It is solvent based, therefore irritant and drying to the skin, causing disruption of skin barrier function, resulting in dermatitis. Gloves soaked in cutting oils was likely to be another contributing factor to the irritant contact dermatitis, as his hands would have been exposed to these chemicals many hours per day while gloved.
3 August 2020	Applicant granted leave to proceed pursuant to s 298 of the WCR Act.

Ouster of Jurisdiction

[6] The Respondents submit that a proper interpretation of the WCRA provisions, and in particular "the intersecting web of reviews and appeals",[2] necessarily imply that

---

2 *Costello v Queensland Rail* [2015] 2 Qd R 296 at [49] per McMeekin J.

this court's jurisdiction to grant the declaratory relief sought is ousted.[3] In the alternative, the Respondents submit that there are several matters which militate strongly against the court affording the declaration as a matter of discretion.

[7] The Applicant argues that the Supreme Court's jurisdiction to grant declaratory relief has not been ousted and points to prior decisions of this court in support of that submission, in particular *Otto v Mackay Sugar Ltd & Anor*[4] and *Costello*.[5]

[8] In *Otto* Douglas J said: [6]

> "[18] The respondent also argued that the applicant should have pursued his statutory remedies instead of seeking the declaratory relief sought by this application. That argument was based on the existence of an internal review system within WorkCover under s 538 of the Act, then an external review to the Authority, Q-Comp, under s 541 and, from there, a further review to an industrial magistrate under s 548(b). I was not directed to any section purporting to limit the right to grant declaratory relief in this Court, although the existence of a statutory alternative remedy is certainly relevant to the issue whether I should exercise my discretion to grant such relief."

(Footnotes omitted.)

[9] In *Costello*,[7] McMeekin J said:

> "[47] So the considerations supporting QR's argument here are stronger. But I am not persuaded that they are sufficiently strong to justify an implication that the Court's jurisdiction is ousted. One consideration is that it would be artificial to hold that the Court's jurisdiction to grant declaratory relief is unaffected in relation to one question arising under Ch 3 or Ch 4 of the legislation (as I have just found) but impliedly removed in respect of another. While the intersecting web of reviews and appeals provides a stronger argument here it is not sufficient in my view to displace the usual position that the Court can declare the rights of citizens.
>
> [48] However the availability of reviews and appeals is relevant to the exercise of the discretion. The observations of Walsh J in *Forster v Jododex Australia Pty Ltd* are often cited in situations akin to this one:

---

3 Paragraph 30 of Exhibit 2 to the hearing of 17 August 2020.
4 [2011] QSC 215.
5 *Costello v Queensland Rail* [2015] 2 Qd R 296.
6 *Otto v Mackay Sugar Ltd & Anor* [2011] QSC 215 at [18].
7 *Costello v Queensland Rail* [2015] 2 Qd R 296 at 305-306.

> 'In my opinion, when a special tribunal is appointed by a statute to deal with matters arising under its provisions and to determine disputes concerning the granting of rights or privileges which are dependent entirely upon the statute, then as a general rule and in the absence of some special reason for intervention, the special procedures laid down by the statute should be allowed to take their course and should not be displaced by the making of declaratory orders concerning the respective rights of the parties under the statute.'

[49] Mr Costello did not identify 'some special reason for intervention'.

[50] The cogent point made by QR is that the Act provides for strict time limits in the exercise of those rights of review and appeals. To make a declaration now adverse to QR would have the effect of avoiding those time limits completely, time limits intended to have substantive effect on the rights of workers and insurers. There is no provision for any extension of those time limits. As well the reviews and appeals are directed to be carried out by designated persons (eg an industrial magistrate) who would be expected to have some familiarity with the issues that typically arise. There is no particular complexity in these issues requiring the attention of this Court.

[51] Further s 237 of the Act demonstrates that the legislature expected there to be cases where injuries were overlooked in the assessment process. Presumably the legislature had in mind injuries that subsequently came to light rather than injuries that were known and ignored. The legal effect is the same. Specific provision was made to permit damages claims to proceed but nothing was said about compensation – save for the review and appellate procedures discussed.

[52] These considerations, it seems to me, provide a much stronger ground for an exercise of a discretion in favour of QR than in respect of the psychiatric injuries. There seems to me to be no significant countervailing circumstance.

[53] I decline to make the declaration sought in relation to the notice of assessment for partial injury to the right ulna nerve and scarring.

[54] The alternative declarations sought do not seem to be relevant given my decision in relation to the psychiatric injury."

(Footnotes omitted.)

[10] In *Otto*,[8] the application was dismissed as Douglas J concluded that the injury sought in the claim for damages at common law was the same injury as injury in the

---

8 *Otto v Mackay Sugar Ltd & Anor* [2011] QSC 215.

workers' compensation claim which was accepted by WorkCover Queensland. Whilst it was unnecessary therefore to make the declaration, Douglas J did conclude that "[i]n the circumstances therefore, if I had been satisfied that the factual basis had been made out, I would have been prepared to make an appropriate declaration."[9]

[11] Importantly, however, as counsel for the Respondents points out, the decision complained of in *Otto* was a decision made under Chapter 5 of the WCRA and not under Chapters 3 or 4. Accordingly, the decision was not a reviewable decision under s 540 of the WCRA. The consequence of this was that the applicant in *Otto* had no ability to take a review decision to QComp, then to the QIRC and eventually, if necessary, to the Industrial Court.

[12] Counsel for the respondent submits that the present application differs significantly from *Otto* in that the decision sought to be reviewed is a decision pursuant to s 134 of the WCRA. Section 134 provides:

> **"134 Decision about application for compensation**
>
> (1) A claimant's application for compensation must be allowed or rejected in the first instance by the insurer.
>
> (2) The insurer must make a decision on the application within 20 business days after the application is made.
>
> (3) The insurer must notify the claimant of its decision on the application.
>
> (4) If the insurer rejects the application, the insurer must also, when giving the claimant notice of its decision, give the claimant written reasons for the decision and the information prescribed under a regulation.[10]
>
> (5) Subsection (6) applies if the insurer does not make a decision on the application within the time stated in subsection (2).
>
> (6) The insurer must, within 5 business days after the end of the time stated in subsection (2), notify the claimant of its reasons for not making the decision and that the claimant may have the claimant's application reviewed under chapter 13."

---

9 *Otto v Mackay Sugar Ltd & Anor* [2011] QSC 215 at [20].

10 This is as to right of review.

[13] As pointed out by Respondents' counsel, *Costello* also differs as it involved an acceptance of a physical injury subject to Chapters 3, 4 and 5 of the WCRA and a psychological injury. Whilst psychological injury is also subject to Chapters 3 and 4, in *Costello* the decision in relation to the psychiatric injury was not made under Chapters 3 and 4.

[14] The Respondents further pointed to *Jacobs v Woolworths Ltd*,[11] as an example of a case where a court's jurisdiction was not ousted and declarations made, however, *Jacobs* involved a self-insurer refusing to process a claim.

[15] Although pursuant to s 134 of the WCRA the decision to allow or reject a claim in the first instance is a decision which is entrusted to the insurer, I agree with McMeekin J in that,[12] s 134 (either by itself or in conjunction with the WCRA as a whole) is insufficiently clear to lead to a conclusion that the jurisdiction of this court is ousted with respect to the decision as to whether or not an applicant has suffered an injury pursuant to Chapter 3 of the Act.

[16] The Applicant points to paragraph 49 of *Costello* and submits that special reason for intervention is demonstrated by a combination of the following three factors:

(a) Firstly, the unlawful non-disclosure by the first Respondent employer of critical information, namely the chemicals used by the Applicant in his employment.

(b) The wrongful, but positive, assertion by the employer that the Applicant was not exposed to chemicals which may cause his injury.

(c) The prejudice to the Applicant in the conduct of his WCRA application caused by the combination of his dyslexia and lack of assistance by a lawyer.

[17] With regard to the first factor, the Applicant points to the material safety data sheet (MSDS) for the product "Protecta Grit". The handling and storage information for Protecta Grit provides: [13]

> "[p]eople who use this product regularly are advised to regularly apply a moisturising cream in order to reduce the possibility of industrial dermatitis. Do not apply the product to irritated or dermatitic

---

11 [2010] 2 Qd R 400.
12 *Costello v Queensland Rail* [2015] 2 Qd R 296 at 305.
13 Exhibit KKB3, page 173 of the affidavit of Kendall Kareem Bocos filed 3 August 2020.

> skin… If irritation occurs or dermatitis develops, discontinue using this product."

[18] The Applicant complains that he did not know of the content of the MSDS of Protecta Grit and the other chemicals used until it was provided to him as a result of his workplace health and safety complaint in 2019. The MSDS for Protecta Grit was of some importance to the applicant as it contained an admission by the manufacturer that the product could, if regularly used, cause industrial dermatitis, the very condition from which he has suffered.

[19] The difficulty for the Applicant is in his submission that there has been non-disclosure; it appears, in fact, the contrary is true. The applicant deposed:[14]

> "A copy of the material safety data sheets used at the workshop were made available to me in an envelope by Peter Scouller. I did not look at any of the material safety data sheets or retain a copy before I arranged for them to be sent to Dr Noakes."

[20] As summarised in Exhibit 3,[15] Dr Noakes was sent the MSDS' for eighteen different products used by the first Respondent and importantly, was provided with all of the MSDS' for the products identified in the report of the dermatologist, Dr Adib. That is, it would seem that in the period of June or July 2013, Dr Noakes had the MSDS' of eighteen chemicals used including all of the chemicals mentioned by Dr Adib in her reports as being causative of injury.

[21] A later disclosure of the MSDS' was achieved as a result of a workplace health and safety complaint in 2019 which produced eleven MSDS', five of which had been provided back in 2013 and a further six MSDS', which have not been the subject of any comment or identification by any expert as in any way being relevant.

[22] Accordingly, I conclude that all relevant MSDS' were disclosed by the first Respondent to the Applicant at an early stage in 2013. The applicant failed to keep a copy of the MSDS' disclosed by his employer in 2013 and then the Applicant made several requests to obtain the MSDS'. The applicant sought a copy of the documents from his employer in his Fair Work claim, however, they were not provided.[16]

---

14 Paragraph 47 of the affidavit of Petrus Stefanus van der Berg filed 3 August 2020.
15 Exhibit 3 to the hearing of 17 August 2020.
16 Exhibit PVDB10 to the affidavit of Petrus Stefanus van der Berg filed 3 August 2020.

[23] In early July 2014 (prior to the Fair Work claim), the Applicant made a verbal request to his dermatologist, Dr Noakes, for "a copy of the reports made available to WorkCover Queensland and other relevant documents held by him in relation to the cause or potential causes of my condition."[17]

[24] The applicant deposes that he was told by Dr Noakes he could not provide a copy of the requested information because it did not belong to Dr Noakes; Dr Noakes said he would seek legal advice and let the Applicant know of the outcome. Some time later, Dr Noakes, by his practice manager, duly informed the Applicant that "… unfortunately we cannot release the report to you without written approval from WorkCover directly, as they own the report."[18] The letter of practice manager makes no reference to other relevant documents held by Dr Noakes.

[25] As the applicant was not cross-examined upon the issue, I accept that he made the verbal request to Dr Noakes in terms similar to that deposed to, namely a request for a copy of the reports and other relevant documents and that the negative reply was made in respect of the report only, however as the Applicant deposed, he did not request a copy of those documents from WorkCover.[19]

[26] Further, the Applicant had a right, pursuant to s 572 of the WCRA, to a copy of relevant documents that were required to be kept by WorkCover Queensland, and it appears that he did not apply in writing for those documents.

[27] Some time in 2013, the Applicant sought advice from Maurice Blackburn Lawyers. The applicant does not depose as to whether he was advised by those lawyers of his rights to obtain documentation from WorkCover Queensland pursuant to s 572 of the Act or request WorkCover Queensland's assistance to obtain the documents from Dr Noakes. All that is said by the applicant is:[20]

> "On 8 January 2014, I received correspondence from Maurice Blackburn Lawyers wherein they advised me they were not prepared to act on my behalf on a 'no win no fee' basis because of the difficulties in proving negligence against Key Solutions Group."

---

17 Affidavit of Petrus Stefanus van der Berg filed 17 August 2020.
18 Exhibit KKB3, page 86 of the affidavit of Kendall Kareem Bocos filed 3 August 2020.
19 Affidavit of Petrus Stefanus van der Berg filed 17 August 2020.
20 Paragraph 86 of the affidavit of Petrus Stefanus van der Berg filed 3 August 2020.

[28] In summary, therefore, I do not accept the applicant's argument that there was non-disclosure of relevant material by the first respondent. To the contrary, there was a full disclosure of relevant material at an early stage, that is, by mid-2013.

[29] As to the second factor, the Applicant submits that the Respondents positively, but wrongly, asserted that the chemicals at its workshop could not have contributed to the Applicant's condition. In support of this contention the Applicant points to a letter of the First Respondent of which provides: [21]

> "Key Solutions Group management in addition to the above, have also completed an audit of the chemicals and materials used in the daily Workshop routine and could not find any materials that would contribute to our employee's condition other than that listed. (Refer attached document attachment 1.)"

[30] The attachment referred to[22] contains a list of 13 products, which the Respondents admit, would have contributed to the applicant's condition. However, the thirteen products that the Respondents nominated as contributing to the Applicant's condition differ from the three products subsequently identified by Dr Adib as being the likely cause of the contact dermatitis.

[31] In her report of 4 December 2019,[23] Dr Adib concludes that the solvent Protecta Grit, the cutting grinding liquid Rocol Ultracut Premium, and the paste Trefolex Cutting Compound were the chemicals likely to have caused the contact dermatitis, and, if Dr Adib's opinion were accepted, it would be misleading to conclude the other thirteen products had contributed to the condition when they had not.

[32] It is important to note that the MSDS' for the three products referred to by Dr Adib were provided to Dr Noakes in 2013. Furthermore, as discussed below, Dr Noakes' consistent opinion was that the applicant had suffered from irritant contact dermatitis caused in the course of his employment with the First Respondent and it is not an aggravation of pre-existing condition.[24]

[33] The second factor, accordingly, cannot be the basis for an acceptance of the submission that there are special reasons to avail the applicant of declaratory relief.

---

21 Exhibit TK9, page 24 of the affidavit of Terrance William Killian filed 13 August 2020.
22 Exhibit TK9, page 23 of the affidavit of Terrance William Killian filed 13 August 2020.
23 Exhibit KKB6 to the affidavit of Kendell Kareem Bocos filed 3 August 2020.
24 Exhibit TK11 to the affidavit of Terrence William Killian filed 13 August 2020.

[34] As to the third factor, whilst the applicant does suffer from dyslexia, he has, with the assistance of his wife, demonstrated an ability to draft impressive, detailed and cogent submissions.[25] Although it is regrettable, that the applicant did not have the benefit of competent legal advice, that is not a special reason for intervention.

[35] The applicant had the benefit of the admissions of 30 August 2013 from the First Respondent employer that thirteen of its products would have contributed to his condition, he had multiple medical reports from Dr Noakes supporting the causal link between exposure to chemicals at his workplace and the applicant's condition and yet he was unable to locate a lawyer that would act for him on a no-win, no-fee basis. By 8 January 2014, Maurice Blackburn had advised him they would not act on a no-win, no-fee basis. There was no suggestion from that that firm, or any other, that they would not act, provided that their fees were paid.

[36] Accordingly, I conclude that the three factors referred to the Applicant, individually or in combination, do not establish a special reason for intervention.

[37] In the present case, the "intersecting web of reviews and appeals" are demonstrated by the materials. The application for compensation was made on 22 July 2013 pursuant to s 132 of the Act.[26] Pursuant to s 134 of the Act, the applicant's application for compensation was allowed "in the first instance by the insurer" (see s 132(1)).

[38] As the Applicant had succeeded at first instance, there was, as appropriate, no internal review by the insurer pursuant to s 538 of the Act. On 19 August, WorkCover Queensland wrote to the Respondent employer informing them that the application had succeeded and informing the employer that any application for review must be made within 3 months of receipt of the letter of 19 August 2013.

[39] Pursuant to s 541, the employer did apply for a review of the first instance decision.[27] On 13 September 2013, the Applicant sent in an impressive four-page submission in support of his claim for the review process.[28] By reasons of 3 October 2013, the authority set aside the decision of WorkCover Queensland to accept the

---

25 Exhibit TK7 and TK8 to the affidavit of Terrence William Killian filed 13 August 2020.
26 Exhibit TK1 to the affidavit of Terrence William Killian filed 13 August 2020.
27 Exhibit TK6 to the affidavit of Terrence William Killian filed 13 August 2020.
28 Exhibit TK7 to the affidavit of Terrence William Killian filed 13 August 2020.

Applicant's claim for compensation and returned the matter to WorkCover Queensland with what was said by the reviewing officer to be appropriate directions, namely that the "specialists be asked whether Mr Van Der Berg's injury arose out of or in the course of his employment with KSG and whether this employment was a significant contributing factor."[29]

[40] The WorkCover Queensland officer who allowed the claim then sent a facsimile to Dr Noakes seeking the doctor's opinion on the issues as directed by the authority.[30]

[41] The meaning of an injury is set out in s 32(1) of the WCRA as follows:

> **"32 Meaning of *injury***
>
> (1) An ***injury*** is a personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.
>
> …"

Section 32(1) does not state that an injury is a personal injury arising out of or in the course of employment if, in a doctor's opinion, the employment is a significant contributing factor to the injury.

[42] Furthermore, s 134(1) states "a claimant's application for compensation must be allowed or rejected in the first instance by the insurer". This makes it plain that it is the insurer's decision and not a doctor's decision as to whether or not a worker has suffered from an injury as defined. The insurer had the letter of the First Respondent employer making admissions of the thirteen chemicals that would contribute to the applicant's condition. The insurer had Dr Noakes' report of 23 October 2010, which made it plain that Dr Noakes had continued with his consistent diagnosis of work related irritant contact dermatitis and opined that it was not as a result of a pre-existing condition.[31]

[43] Dr Noakes' further report of 29 October 2013,[32] Dr Noakes again relates the applicant's condition to his work, although, Dr Noakes could not then advise whether the applicant was one of "a group of people who proceed from initial

---

29 Exhibit TK8 to the affidavit of Terrence William Killian filed 13 August 2020.
30 Exhibit TK9 to the affidavit of Terrence William Killian filed 13 August 2020.
31 Exhibit TK10 to the affidavit of Terrence William Killian filed 13 August 2020.
32 Exhibit TK11 to the affidavit of Terrence William Killian filed 13 August 2020.

irritant dermatitis to chronic hand dermatitis…[i]t is likely to have been precipitated by the initial irritant contact dermatitis but maintenance is through immunological mechanisms."[33]

[44] Further supportive information for the Applicant's claim, somewhat inexplicably resulted in his claim being rejected, not only by the original decision maker (who had previously approved his claim) but by an internal review pursuant to s 548. The reasons are plainly wrong, insofar as they state:[34]

> "…Dr Noakes has been unable to confirm any relationship between your current condition and your employment with both Key Solution Group and Fine Design Glassworx. As Dr Noakes has been unable to confirm this, WorkCover Queensland are not satisfied that your current condition is work related. As a result, WorkCover Queensland is unable to accept liability for the claim and no further medical expenses will be covered."

[45] The reasons misunderstand Dr Noakes' written opinions and fail to apply the correct statutory test.

[46] The reasons of 23 January 2014, did specifically (as is required) inform the Applicant of his rights of review within a period of 3 months. Prior to the expiry of that three-month period on 23 January 2014, the applicant did apply for review pursuant to s 542 of the WCRA, with a comprehensive 8-page written submission.[35] The First Respondent provided the review officer with a 9-page written submission with 120 pages of attachments.[36]

[47] On 10 March 2014, a review officer affirmed the decision of WorkCover Queensland to reject the application for compensation.[37] Despite the First Respondent's admissions of the causal connection, and the consistent unopposed opinions of Dr Noakes supporting the application, the reviewer concluded that "there is no definitive evidence to demonstrate there is a causal connection between Mr Van der Berg's bilateral dermatitis and his employment..."[38]

---

33 Exhibit TK11 to the affidavit of Terrence William Killian filed 13 August 2020.
34 Exhibit TK12 to the affidavit of Terrence William Killian filed 13 August 2020.
35 Exhibit TK13 to the affidavit of Terrence William Killian filed 13 August 2020.
36 Exhibit TK14 to the affidavit of Terrence William Killian filed 13 August 2020.
37 Exhibit TK15 to the affidavit of Terrence William Killian filed 13 August 2020.
38 Exhibit TK15 to the affidavit of Terrence William Killian filed 13 August 2020.

[48] Importantly the Applicant was informed of his right to appeal to the Queensland Industrial Relations Commission ("QIRC") within 20 business days. The applicant did not apply until 24 January 2015, which was 214 days after the 20 business-day time limit for appeal.

[49] The QIRC refused the application to extend time on 2 September 2015.[39] The decision of the QIRC has not been appealed to the Industrial Court pursuant to s 561 of the WCRA.

[50] It is unnecessary to speculate whether, had the applicant appealed within time to the QIRC, or at all to the Industrial Court, that he would have succeeded. What is plain is that the WCRA is comprehensive in its provisions to deal with the rights of an injured worker to compensation and statute has as "intersecting web of reviews and appeals" concerning the granting of rights or privileges which are dependent entirely upon statute such that the general rule referred to by Walsh J in *Forster v Jododex* is engaged.[40] It is important that the special procedures laid down by the WCRA should be allowed to take their course and ought not to be displaced by the making of declaratory orders concerning the respective rights of parties under the statute, unless, as Walsh J said in *Forster v Jododex* there is a "special reason for intervention".[41]

[51] This case is not one in which there is some special reason for intervention. Parliament has set out a detailed path in a comprehensive manner to determine the rights of injured workers under the WCRA. Its path is, as I have outlined above, the decision of the insurer, an internal review, a review by the authority, then an appeal to the Industrial Relations Commission, and further appeal to the Industrial Court.

[52] I consider that it is inappropriate in the present case to make the declarations sought in paragraph 2 and consequently 3 of the originating application.

Extension of time

[53] As s 237 of the WCRA has not been satisfied, pursuant to s 237(5) of the Act, the applicant cannot demonstrate a *prima facie* case. Furthermore, the opinions of Dr Adib do not convert what was otherwise a worthless case into a worthwhile case.

---

39 Exhibit TK17 to the affidavit of Terrence William Killian filed 13 August 2020.
40 (1972) 127 CLR 421, 427.
41 *Forster v Jododex* (1972) 127 CLR 421, 427.

Properly construed, Dr Noakes has provided supportive medical opinion for a worthwhile case since 12 August 2013.[42] Indeed prior to that, Dr Hornsby consultant at the Mackay Base Hospital in his report of 21 July 2013 (see exhibit PVDB2) wrote "there is good evidence that this is a work-related condition".[43] The Applicant's case was, at least, a worthwhile case since 12 August 2013.

[54] Even if it were accepted, which I do not, that the relevant MSDS' for the chemicals stored at the workshop were not made available to the applicant until 5 April 2019,[44] that, in any event, is a date which precedes 3 August 2020 by more than 12 months and accordingly that information could not be considered the proper basis to succeed in an application for an extension of the three year time limitation period.

[55] Therefore, the application is dismissed.

---

42 Exhibit TK2 to the affidavit of Terrence William Killian filed 13 August 2020.
43 Exhibit PVDB2 to the affidavit of Petrus Stefanus van der Berg filed 3 August 2020.
44 Paragraph 104 of the affidavit of Petrus Stefanus van der Berg filed 3 August 2020.