



## HIGH COURT OF AUSTRALIA

30 October 2013

### WINGFOOT AUSTRALIA PARTNERS PTY LTD & ANOR v EYUP KOCAK & ORS

[2013] HCA 43

Today the High Court unanimously allowed an appeal against a decision of the Court of Appeal of the Supreme Court of Victoria, holding that certiorari was not available to quash an opinion of a Medical Panel made under the *Accident Compensation Act 1985 (Vic)* ("the Act") where that opinion had no continuing legal consequences.

The first respondent ("the Worker") was employed by the appellants ("the Employer") when he suffered an injury at work. The Worker commenced two proceedings relating to that injury: one seeking leave to bring proceedings for common law damages ("the serious injury application") and the other seeking, under the Act, a declaration of entitlement to medical or like expenses ("the statutory compensation application"). The Magistrates' Court of Victoria, which heard the statutory compensation application, referred three medical questions to a Medical Panel for determination under the Act. Upon receiving from the Medical Panel a certificate of the Medical Panel's opinion and written statement of reasons, the Magistrates' Court made orders by consent to "adopt" and "apply" the opinion, and to dismiss the statutory compensation application.

The serious injury application subsequently came before the County Court of Victoria. The Employer contended that the County Court was bound by the opinion of the Medical Panel, either because of s 68(4) of the Act, which relevantly provides that the opinion of a Medical Panel be adopted and applied, and accepted as final and conclusive, by a court, or because the orders made by the Magistrates' Court gave rise to an issue estoppel. The Worker then applied to the Supreme Court of Victoria for an order in the nature of certiorari to quash the opinion of the Medical Panel on grounds including that the Medical Panel failed to give adequate reasons for its opinion. The application was dismissed but the Worker successfully appealed to the Court of Appeal. By special leave to appeal, the Employer appealed to the High Court.

The High Court unanimously held that inadequacy of reasons is an error of law on the face of the record of an opinion of a Medical Panel for which certiorari will ordinarily be available. An order in the nature of certiorari was not, however, available in the circumstances of this case where the opinion of the Medical Panel had no continuing legal consequences. The Court held that s 68(4) of the Act operated to require that the opinion of the Medical Panel be adopted and applied only in the determination of the question or matter in which the medical question arose and in respect of which the medical question was referred to the Medical Panel, rather than for the purposes of determining some other question or matter. The question or matter which comprised the controversy between the parties to the statutory compensation application was brought to a conclusion when that application was dismissed. The Court also held that the Magistrates' Court's adoption and application of the opinion of the Medical Panel when

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dismissing the statutory compensation application created no issue estoppel binding the parties in the serious injury application. The Court held further that, in any event, the Medical Panel's reasons explained the actual process of reasoning by which the Medical Panel formed its opinion, in sufficient detail to enable a court to see whether the opinion involved any error of law, and therefore met the standard required by the *Administrative Law Act 1978* (Vic).

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*