

News&Views

JUNE 2018

bradbroom
lawyers

Workplace Relations, Employment & Safety



The Full Court of the Supreme Court of South Australia delivered its Judgment in the matter of *Return to Work Corporation of South Australia v Preedy* [2018] SASCFC 55 on 15 June 2018.

While the appeal was allowed and the matter remitted to a single Judge of the SAET to address certain factual matters, the Full Court has delivered a Judgment that settles the relevant legal principles with respect to combining whole person impairments under the RTW Act.

Background

Mr Preedy had two separate assessments for WPI. The first under section 43 of the WRC Act at 11% for a left shoulder impairment and the second under s58 of the RTW Act for a 27% neck impairment. The neck impairment was caused by medical treatment provided to the left shoulder.

Mr Preedy was declared a seriously injured worker by the Full Bench of the SAET with a combined 35% WPI.

The Corporation appealed the Full Bench's reasons and findings and submitted through its senior counsel Mr M Livesey QC that:

1. Impairments that did not result from the same trauma should not be combined;
2. Section 22(8) of the RTW Act did not apply and s58(6) exclusively governed whether impairments should be combined for the purpose of a non-economic lump sum benefit;
3. The SAET Full Bench reliance on *Martin* was misplaced;

4. Mr Preedy was only entitled to a new assessment for WPI if the neck injury was not the same injury and did not arise from the same trauma;
5. The two injuries did not arise from the same trauma and s22(8) did not require the two to be combined.

Mr Preedy submitted through his senior counsel Mr M Roder SC that:

1. The effects of medical treatment are to be regarded as the same injury unless the causal chain had been broken (i.e. unforeseen negligence on the part of the medical provider);
2. Section 58 is not subordinate to s22;
3. Section 22 is the central provision which identifies the way in which permanent impairments are to be assessed;
4. In the alternative it was submitted that *Marrone* no longer applies as the RTW Act is set in a different statutory context.

The principle Judgment was delivered by Mr Justice Stanley. His Honour, noted the tension in the RTW Act for the purposes of this appeal was between the provisions of s22(8) (c) and s58(6) and reasoned as follows:

1. The RTW Act makes special provision in a number of places for seriously injured workers and of central importance is s22;
2. Section 22(8)(c) sets out the approach for **assessing the degree of impairment** and requires that impairments from the same injury or cause are to be assessed together or combined to determine the WPI;



3. Section 58(6)(a) provides that for the purposes of **assessing the entitlement** to a lump sum payment where a worker suffers two or more injuries arising from the same trauma, the injuries may be treated as one as set out in the Impairment Guidelines; *[It is to be noted s58(6) is directed to injuries not impairments. And further, it creates a fiction by deeming two separate injuries to be treated as one];*
4. Trauma is defined in s4(1) to mean an event or series of events out of which a work injury arises;
5. Impairments and Injury are related and distinct concepts. Impairment is a condition which results from an injury;
6. While there is blurring of the concepts of injury and impairment in the RTW Act, it is clear that the expressions “Injury” and “Impairment” as used in the context of WPI assessments differentiate between these concepts as outlined above and referred to by His Honour. There is a distinction between causes and consequences;
7. The reference to the same injury or cause in s22(8)(c) is a reference to the thing or event from which an impairment results. The relevant cause is the cause of the impairments;
8. The Full Bench was correct in identifying s22 as the dominant provision regarding the undertaking of assessments for WPI;
9. Section 58 is not the only provision which governs a WPI assessment;
10. *Marrone* no longer applied because the RTW Act is a different statutory context;
11. For the purposes of undertaking a lump sum assessment, s58(6) and s22(8)(c) are cumulative. So, multiple impairments are to be combined if a worker suffers two or more work injuries which arise from the same event or a series of events (refer s58(6)) or where they arise from the same injury or cause (refer s22(8)(c));

12. The Full Bench erred in law in concluding that multiple impairments may only be combined for the purpose of assessing a WPI entitlement pursuant to s58(6);
13. The Full Bench erred in fact and law in concluding that the original shoulder injury and the subsequent medical complication to the neck arose from the same trauma. (Appeal allowed on these two discreet points).

Mr Justice Stanley helpfully illustrated circumstances in which impairments may be combined [at 55 to 59 of his Judgment], namely:

1. A right knee work injury which causes a consequential injury to the left, will be from the same injury or cause and as such satisfy the test in s22(8)(c);
2. An impairment resulting from surgery or medical treatment is to be treated as from the same cause as the work injury (s22(7)(b));
3. A low back and thoracic injury sustained in the same accident will be a same trauma injury and treated as a single injury to the extent set out in the Guidelines and assessed together using the principles in the Guidelines.

It will be appreciated from the above illustrations that the reasoning of Mr Justice Stanley, which was adopted by the other members of the Full Court, enlarges the range of circumstances in which impairments may be combined to include s22(8)(c) and not merely confined to s58(6).

Bradbrook Lawyers has represented Mr Preedy in relation to the hearing at first instance and both subsequent appeals. Any queries should be directed to Ms Jodie Bradbrook.

The Judgment is [attached](#).

**bradbroom
lawyers**

Level 1, 81 - 89 Hutt Street, Adelaide SA 5000
T 08 8227 2829 | M 0410 318 220 | F 08 8227 2832
jodie@bradbroomlawyers.com.au

This newsletter is provided for information purposes and does not constitute legal advice. If you require legal advice regarding your particular circumstances please contact Jodie Bradbrook