Gilchrist Connell

The Key SAET Decisions of 2016

Presented by

Joe Parisi

Gilchrist Connell

Gilchrist Connell

Weekly Payments – Worker's with Pre-Existing Injuries

- *Pennington v Return to Work SA*
- *Watkins v Return to Work SA*

Pennington Decision

- In 2013, the worker injured her lower back at work.
- Claim accepted for weekly payments.
- In 2014, weekly payments were discontinued because the worker obtained employment under the RISE Scheme and returned to work.
- In July 2015 the new employer went into liquidation.
- The worker made a further claim for weekly payments which was rejected under clause 37 of the Transitional Provisions.

Pennington Decision

- To fall within clause 37, a worker must have been "*still entitled to receive a weekly payment*" as at 1 July 2015.
- A worker who ceased to have an entitlement on account of a discontinuance under s36 of the WR&C Act is not entitled to weekly payments under the RTW Act.
- The worker argued that she was "*potentially still entitled to receive a weekly payment*" as at 1 July 2015 because she had an incapacity for work and her entitlement depended on her continuing to work.

Pennington Decision

Key Decision: a worker who was not in receipt of weekly payments as at 1 July 2015 due to a s36 discontinuance is not entitled to receive weekly payments under the RTW Act.

Ms Pennington was not entitled to weekly payments.

Watkins v Return to Work SA

- In 2014 the worker fell at work and broke her arm.
- In February 2015, weekly payments were discontinued on the basis that she had returned to work.
- In August 2015, the worker underwent surgery for her arm injury.
- The worker claimed weekly payments for her time off work following surgery.
- The claim was rejected and it was argued that "*Pennington*" applied.

Watkins v Return to Work SA

- The key issue in the case was whether the worker could rely upon the surgery as a new injury giving rise to an entitlement to weekly payments.
- Return to Work SA relied on s7(6) of the RTW Act.
- Key decision: in contrast to the position under the WR&C Act, surgery is no longer regarded as a “new injury”.
- Ms Watkins was not entitled to weekly payments.

Costs of Appeal

Brennan-Lim v Return to Work SA (No 2)

- Under the WR&C Act, costs of appeals followed the outcome.

- Key decision: costs of appeals are no longer determined according to the result of the decision. Workers are entitled to costs win or lose (unless they act unreasonably)

Future Surgery

Tinti v Return to Work SA

- The entitlement to medical expenses is now for a limited period.
- However, one of the exceptions is for surgery where it is reasonable and appropriate for the surgery to be undertaken in the future.
- Mr Tinti made an application for future surgery.

Future Surgery

- Key decision – a worker is not required to identify a time in the future when the surgery will take place.
- Key decision: a worker is required to show, on the balance of probabilities, that surgery is likely to be needed in the future and the cost is reasonable.
- Key decision: an application seeking pre-approval of an unspecified number or unspecified type of procedures over time should be refused. To be reasonable and appropriate, the nature of the surgery sought to be undertaken in the future must be identified.

Gilchrist Connell

Meaning of Significant Contributing Cause

- *Ward v State of SA*
- *Roberts v State of SA*

Ward v State of SA

- Mr Ward had a (non-work related) seizure on a fishing vessel whilst in the course of his employment.
- As a result, Mr Ward suffered a fractured ankle.
- The claim for the ankle injury was rejected on the basis that employment was not a significant cause.
- It was argued that there was no connection between employment and the ankle injury.
- The Judge found that Mr Ward probably broke his ankle when being helped onto the deck by co-workers. Therefore employment was a significant contributing cause.

Ward v State of SA

- Key decision: there can be multiple contributing causes to an injury; one or some can be very important. A cause that is less important can still be significant.

Roberts v State of SA

- The worker contracted inflammatory arthritis after being bitten by a mosquito whilst asleep.
- The worker was working for her employer at a remote location.
- Issues:
  - did the injury arise from employment?
  - was employment a significant contributing cause of the injury?

Roberts v State of SA

Key decision: significant means “important, notable, consequential”.

The worker’s injury was a significant contributing cause because she was in the place where she sustained the injury because of work and her injury was related to that place.

Compensability Cases

- *The State of South Australia v James* – injury while leaving workplace after attending to complete annual leave forms and timesheets.

- *Baillie v Return to Work SA* – injury to knee whilst performing Pilates at home.

- *Moretta v Return to Work SA* – injury at a pre-game dinner at Adelaide Oval

Combining Multiple Impairments

- *Preedy v Return to Work SA* – impairment from neck while undergoing physiotherapy not combined with shoulder impairment
- *Pollidorou v Return to Work SA* – scarring impairment from surgical treatment combined with right arm impairment.
- *Martin v Return to Work SA* – impairments from lumbar spine surgery combined with lumbar spine surgery but scarring not combined.
- *Mazis v LGA* – scarring impairment from surgical treatment combined with wrist impairment.

Permanent Impairment: s58 cases

- *Crespan v Return to Work SA*
- *Puccio v Return to Work SA*
- *Abraham v Return to Work SA*
- *McBride v Teys Australia*

Crespan v Return to Work SA

- The worker filed an application for review in relation to a permanent impairment assessment report of Dr Jennings.
- Dr Jennings assessed a 25% entitlement.
- At the time the application was lodged, no decision had been made in relation to the worker's entitlement under s58.

Crespan v Return to Work SA

- The worker argued that the report of Dr Jennings could be reviewed even though no determination had been made.

- Key decision: the Tribunal has no jurisdiction to deal with a PIA matter until a decision has been made by the Compensating Authority.

- This does not apply to psychiatric PIA reports.

Puccio v Return to Work SA

- In 2013, Dr Bastian assessed a 28% WPI.
- In 2014, Dr Bastian assessed a 28% WPI.
- In 2014, Return to Work SA determined a lump sum of $70,000 based on a 28% WPI.
- In 2015, Dr Bastian assessed a 30% WPI.
- Mr Puccio argued that he was therefore a seriously injured worker.

Gilchrist Connell

Puccio v Return to Work SA

- Mr Puccio argued that all he was required to do was show he had a 30% WPI and the prior determination was irrelevant.
- Key decision: if a worker has had a s43 assessment then, to be determined to be a seriously injured worker, there had to be an entitlement pursuant to s43 that is based on a 30% or more WPI.
- Mr Puccio also applied for a review of the s43 decision made in 2014. To succeed, he needed an extension of time.
- The Tribunal refused to allow an extension of time because they delay was “very great” and the explanation for the delay was not sufficient.

Abraham v Return to Work SA

- Mr Abraham had a psychiatric injury and was assessed by Dr Bem as having a 20% WPI.
- In light of this report, Return to Work SA determined that Mr Abraham did not qualify as a seriously injured worker.
- Mr Abraham challenged the decision and sought a referral to an Independent Medical Adviser.
- Return to Work SA applied to strike out the dispute.

Abraham v Return to Work SA

- Mr Abraham obtained evidence to show that Dr Bem's assessment may have been incorrect.
- Key decision: there can only be one assessment.
- Is the assessment binding on the Tribunal? No.
- Key decision: a worker or employer can apply to the Tribunal to test the assessment.
- Key decision: an alternative medical assessment can only take the form of an assessment by an Independent Medical Adviser.

McBride v Teys Australia

- Mr McBride sought an assessment of permanent impairment. He was not told about all the assessors who could assess his injury but was only give a list of seven.

- An assessment of nil was made.

- Mr McBride argued the assessment was wrong and that the PIA Guidelines were not followed because he was only given a small list of assessors.

McBride v Teys Australia

- Key decision: the Tribunal does not have jurisdiction to fix a problem with the PIA process. The role of the Tribunal is to decide the merits of the case.

- Key decision: if there is no evidence to challenge a PIA report, then there is no basis for a dispute.