



# A year in review: pulling the threads together under the *Return To Work Act*

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## Topics to consider

1. The requirement for a claim
2. The whole person impairment process
3. Limits to medical expenses



## The requirement for a claim



1. Under the *Workers Rehabilitation and Compensation Act 1986* a claim was seen as fundamental to enlivening the jurisdiction of the then Tribunal.
2. In the context of permanent impairment assessments, there has been a challenge to this.
3. Also touches into the seeking of declaratory relief.
4. Discussion of *Lohmann v Return to Work Corporation* [2019] SAET 213.

## The requirement for a claim

1. In the context of a permanent impairment assessment, a worker cannot simply request an assessment without a claim.
2. The parameters of what that claim should look like have not been defined.
3. Cannot alternatively seek declaratory relief because no jurisdiction in the Tribunal absent a claim.
4. Two even more recent decisions have commented on seeking declaratory relief and noted that it is not a process by which a worker can avoid a proper evidentiary enquiry.

# Whole Person Impairment

## Process

1. In *Abraham v Return to Work SA* [2016] SAET 76, whilst the single assessment was acknowledged it was also found that the Tribunal would review the factual foundation of the assessment.
2. In *Palios v Return to Work Corporation* [2019] SAET 224, a more proscriptive approach to the assessment process is “indicated”.
3. The concern being around the assessment report, dialogue with the assessor and how to address compliance issues.



# Whole Person Impairment

## Process

1. Current take away is to continue to seek to correct errors rather than simply make a determination that the report is not compliant and for the matter to go into dispute.
2. To do so, need to have transparent dialogue with the applicant and representatives.
3. Also must not be overlooked that the comments in the decision are not binding.

# Whole Person Impairment

## Combination

1. The movement has been towards wide ranging combination of assessments.
2. That movement however depends on acceptance of “the same injury or cause” in section 22(8)(c) as indicating two separate concepts.
3. Decisions of *Cooper* [2018] SAET 220, *Summerfield* [2019] SAET 106 and *Preedy* [2019] SAET 228 all on appeal.

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"I didn't experience any of the side effects listed in the enclosed literature. Should I be concerned?"

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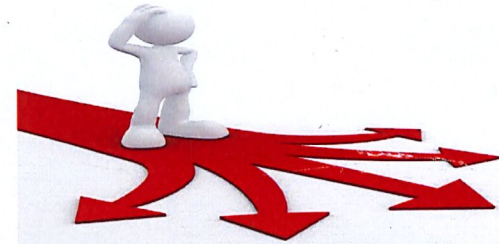
# Whole Person Impairment

## Combination

1. The decision in *Marrone* still remains good law in relation to the interpretation of the concept of trauma.
2. The recent decisions have also supported the concept of injury as having a limiting effect, eg. taking medication which causes harm is a separate injury to the initiating event for which the medication was taken.
3. The focus on combination has been on the concept of “cause” which is seen to be an expansive concept.
4. If the current reasoning is accepted it may yield situations where there is a different treatment as to a whole person impairment assessment for the purposes of section 58 (non-economic loss) as against section 21 (serious injury).



## Medical Entitlements



1. Still unsettled in relation to a clear working definition for what is surgery.
2. Has been accepted that a steroid injection and an arthroscopy are surgical procedures.
3. Generally accepted that various joint replacements are prosthetic devices and hence therapeutic appliances. Some suggestion that a nerve stimulator could be treated as a therapeutic appliance but has not been decided.

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# Medical Expenses



## Limitation period

1. *Giameos v Return To Work SA* [2019] SAET 55 found that sections 33(17) and (18) could not be relied upon to in essence extend the period of entitlement to medical expenses by seeking pre-approval prior to the end of the entitlement date.
2. There was some suggestion that, if services were paid for prior to the expiration of the limitation period, then could extend beyond that period.
3. Subject to a reserved decision of the Supreme Court.

# Medical Expenses

## Requirements for Application for Future Surgery

1. Has been a consolidation of the factors to be considered, having regard to the decision of the Supreme Court in *Rudduck and Karpathakis*.
2. To consider whether:
  - the medical services relate to an existing injury;
  - the services constitute “surgery or associated medical services”;
  - that an application has been made within the requisite time limit;
  - the application demonstrates “it is reasonable and appropriate for such surgery to be undertaken at a later time”. This to be considered in the context of a positive impact or likely impact on the worker’s health and capacity including future health and capacity.
3. The acceptance of the application is not as to the reasonableness of treatment at some later time but is focused solely on abandoning the time limit.
4. As an example, if the time limit is abandoned then a worker at some time in the future could make application under section 33(17) for pre-approval of the cost. This would then enliven the considerations under section 33(1).

## What to look forward to



1. It is likely there will be greater clarification in 2020 concerning the combination of assessments for whole person impairment.
2. Likely to be greater clarity around what medical treatment can be claimed in the future.
3. One of the greater challenges going forward will be addressing the factual basis for allegations of aggravations, etc. and consequential injuries.

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# Questions and Discussion

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