



## The consequences of hard work

A recent decision of the Supreme Court of *Gatt v State of New South Wales* [2019] NSWSC 451 highlights the need for injured workers to retain expert legal advisors.

Mr Gatt commenced employment with the NSW Ambulance Service in 1980. On 1 February 1993 he injured his right shoulder in a helicopter crash during a rescue operation. He continued to work despite ongoing pain and reduced movement in his right shoulder. On 3 December 2011 Mr Gatt sustained further injury to his right shoulder while attempting a rescue in the Blue Mountains. He continued to work. In 2014 he underwent shoulder replacement surgery, and, as testament to his work ethic, returned to work.

Mr Gatt brought proceedings in the Workers Compensation Commission claiming compensation for the permanent damage to his right shoulder. He relied only on the 2011 injury even though he had sustained injury in 1993 and worked on in duties that seem to have caused ongoing aggravation of his shoulder. He was assessed to have 21% whole person impairment due to his right shoulder injury.

An appeal by the Ambulance Service resulted in the Medical Appeal Panel applying a 75% deduction on account of Mr Gatt's 1993 injury, thereby reducing his total whole person impairment to 5%, an amount for which no compensation is payable.

Mr Gatt's application for judicial review to the Supreme Court was dismissed by His Honour Mr Justice Campbell who determined that there was no error in the application of the 75% discount. Justice Campbell was not without sympathy for Mr Gatt, stating "*...the legal outcome here strikes me as most unfortunate involving, as it does, the law denying an obviously deserving claimant the full lump sum compensation he could otherwise legitimately expect to receive for an obviously serious consequence of a series of injuries received at work with the one employer.*"

Justice Campbell's comments reflect the complexity of, and sometimes unfortunate outcomes for injured workers under the NSW workers compensation scheme. Workplace injuries do not always result from a single incident alone. They can arise over many years, for example, a bricklayer whose repetitive duties cause injury or a care worker undertaking repetitive heavy lifting.

The *Workers Compensation Act 1987* ("*WC Act*") does recognise these common workplace scenarios. Section 4(b) of the *WC Act* extends the definition of a workplace injury to include a disease contracted by a worker in the course of their employment or the aggravation, acceleration, exacerbation or deterioration of that disease. Sections 15 and 16 of the *WC Act* further recognise these disease injuries and artificially "set" the date of injury to ensure compensation is payable by the injured worker's last employer.

If Mr Gatt's right shoulder injury was positioned as being due to the arduous nature and conditions of his longstanding employment with the Ambulance Service, as the *WC Act* disease provisions allow, he may have been awarded appropriate compensation.

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As an injured worker you are entitled to be advised by Toby Tancred. The Workers Compensation Independent Review Office (WIRO) can assist by providing funding for this legal advice.

WIRO provides funding to approved Solicitors to investigate claims, provide advice to you as an injured worker, and deal with employers and insurers on your behalf. Toby Tancred is a WIRO accredited Solicitor and a Law Society Personal Injury Accredited Specialist with the experience, knowledge and ability to help all injured workers in difficult times.