



When the injuries add up

The NSW Court of Appeal recently considered the circumstances in which the impact of multiple separate injuries can be combined to determine an injured worker's whole person impairment. Assessment of an injured worker's whole person impairment is critical in determination of their right to weekly benefits, medical and related treatments expenses, lump sum compensation and damages.

The injured worker sustained injuries to her right shoulder, thoracic and lumbar spine in 2011 and further injuries to her thoracic and lumbar spine in May and September 2012. The injured worker made a claim for lump sum compensation against her Employer in the Workers Compensation Commission (now the Personal Injury Commission).

The injured worker was referred to an Approved Medical Specialist ("AMS"), an independent Doctor appointed by the Commission to determine the injured worker's level of impairment. The AMS was directed to apportion the injured worker's impairment between the three dates of injury. The AMS assessed the injured worker to have a combined Whole Person Impairment of 15%, being 3% for her right shoulder, 5% for her thoracic spine and 7% for her lumbar spine.

Section 322 *Workplace Injury Management and Workers Compensation Act 1998 ("WIM Act")* is in the following terms:

"322 *Assessment of impairment...*

- (2) *Impairments that result from the same injury are to be assessed together to assess the degree of permanent impairment of the injured worker.*
- (3) *Impairments that result from more than one injury arising out of the same incident are to be assessed together to assess the degree of permanent impairment of the injured worker..."*

An Arbitrator of the Commission determined the spinal impairments should be divided equally between the three dates of injury and that her total whole person impairment was less than 15% - the threshold for bringing a claim for Work Injury Damages.

The injured worker appealed the Arbitrator's decision. A Deputy President of the Commission determined the spinal injuries could be assessed together, resulting in 12% Whole Person Impairment, but that the 3% Whole Person Impairment for the injured worker's shoulder injury could not be aggregated given it was "*a different injurious event*".

The injured worker appealed the Deputy President's decision arguing that she had misconstrued s322 *WIM Act* and erred in finding that the injured worker's injuries could not be assessed together. The Court of Appeal determined that all impairment arose out of and resulted from the same incident, being the incident on 14 November 2011, and should therefore be assessed together pursuant to s322(3) *WIM Act*.

The Court ordered that the determination of the Deputy President be set aside and that the Employer pay compensation to the injured worker for a 15% Whole Person Impairment as a result of injuries incurred on 14 November 2011.

This decision of the NSW Court of Appeal highlights the need for injured worker's to receive expert and specialised legal advice to ensure they receive their proper and lawful entitlements for work injury.

As an injured worker you are entitled to be advised by Toby Tancred or Melissa Arndell. The Independent Review Office (IRO) can assist by providing funding for this legal advice. IRO 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 and Melissa Arndell are IRO Approved Lawyers. Toby Tancred is also a Law Society Personal Injury Accredited Specialist and has been recognised by Doyle's Guide as a Recommended Work Injury Compensation Lawyer for two years running. Doyle's Guide has also named Toby Tancred Solicitor as a Recommended Asbestos & Dust Diseases Compensation Law Firm. Toby Tancred and Melissa Arndell have the experience, knowledge and ability to help all injured workers in difficult times.