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A “*Brave New World*”: Don’t get caught out: Assessments of Permanent Impairment for Work Related Injuries

- by Grant Feary, Senior Solicitor

*Practitioners with work injury files should as soon as possible – and in any event **well before 1 July 2015** review those files and obtain updated instructions from any injured worker who may have a further entitlement to a lump sum payment for permanent impairment where there has already been a Section 43 determination.*

Practitioners will be aware of the impending commencement of the *Return to Work Act 2014 (SA)* and the repeal of the *Workers Rehabilitation and Compensation Act 1986 (SA)* (“the Current Act”). This “*Brave New World*” starts on **1 July 2015**.

Assessments of permanent impairment under Section 43 of the Current Act can be made at different times with respect to impairments to different parts of the body arising from the same trauma. Sometimes, multiple parts of the body can be injured at the time of the traumatic event and, in other cases, there may be one part of the body which is immediately injured and thereafter consequential affects to other parts of the body may occur.

In such cases, it is sometimes the case that one part of the body will initially be stable and capable of a final assessment but other parts of the body may not yet be stable and therefore not yet capable of a final assessment. The Current Act allows a worker to pursue separate lump sum payments for the various parts of the body as they become stable.

Section 22 of the *Return to Work Act 2014 (SA)* (and particularly subsection 10) requires that **only one** assessment be made of permanent impairment to **all** relevant parts of the body with respect to injuries arising from the same trauma. Put simply, if there are multiple parts of the body affected and an assessment and determination is made with respect to only one part of the body, then the other parts of the body **cannot** be subsequently pursued by way of a claim for a lump sum payment.

This raises the question as to what happens to a worker who has had an injury to one part of the body assessed and determined and either now or in the coming months, may have permanent impairment to other parts of the body arising from the same trauma. Could such a worker still pursue a claim for a lump sum payment for permanent impairment beyond 1 July 2015?

Clause 44 to Schedule 9 of the *Return to Work Act 2014* indicates that a worker will **not** be able to pursue a further entitlement in such circumstances. Clause 44 provides as follows:

“44 Permanent Impairment Assessment

A person whose entitlement for non-economic loss has been determined under Part 4 Division 5 of the repealed Act in respect of an existing injury is not entitled to an assessment under Part 2 Division 5 of this Act in relation to the same injury (or any other injury arising from the same trauma).”

All solicitors with files relating to work injuries should therefore immediately review those files and obtain updated instructions from any injured worker that they may represent and who may potentially have a further entitlement to a lump sum payment for permanent impairment where there has already been a determination pursuant to Section 43 of the Current Act.

If there is any possible further entitlement then the relevant injury needs to be assessed urgently and a determination obtained prior to **1 July 2015**. If this is not done, then, by operation of Clause 44 to Schedule 9, the injured worker may be denied a lump sum to which they might have otherwise been entitled.

(Particular thanks are due to Tony Rossi, Chair of the Law Society of South Australia’s Accident Compensation Committee for this Riskwatch article).