

# IMPAIRMENT INSIDER

ISSUE 9  
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Returnto  
**WorkSA**

## Introduction

Welcome to the ninth edition of the Impairment Insider. My name is Julianne Flower, Leader Scheme Support and I write to you on behalf of the Impairment Assessment Services (IAS) team. I have worked at ReturnToWorkSA since 2013 and have experience in health care and worked for almost 30 years in workers compensation. It is my pleasure to share with you that the IAS team is now part of the Scheme Support team, within the Regulation business unit.

Briefly, Scheme Support provides a diversity of support and education to health providers who provide services within the work injury Scheme, reviews and regulates provider fees, liaises with and supports employers and we provide a service to injured workers who need assistance navigating access to community services.

You may be interested to know since our last newsletter that we farewelled Karmilla Chenia, who moved to Minter Ellison, and we welcomed a new Impairment Assessment Advisor, Cassandra Schmidtke, who has come from claims agent, Gallagher Bassett. Cassandra brings with her experience in the complex workings of whole person impairment management and referral process. She joins Sue Fieldhouse whom I am sure you have had many interactions with over the years.

Lastly, Kirstie O'Callaghan has moved from the Impairment Assessment team to a Program Officer role in the Scheme Improvement Office and Kate Smith has resigned from ReturnToWorkSA as Manager, Impairment Assessment Services. That role will become Manager, Provider Programs, an expanded role to encompass a broader provider portfolio, whilst maintaining responsibility for the Impairment Assessment Services team.

I will keep you posted about developments as we recruit to this position.

Meanwhile, for all your impairment assessment needs, you can contact Sue or Cassandra at [wpi@rtwsa.com](mailto:wpi@rtwsa.com) or phone our Impairment hotline on **8238 5960**.

### Education and Support

As part of our commitment to providing relevant education and support for impairment assessors, we were delighted to present to you in May, the internationally regarded assessment expert, Dr Christopher R. Brigham. Many of you were able to join us in person for an interesting and informative session where Dr Brigham shared his insights on many aspects of permanent impairment assessment.

We are pleased to advise our next Impairment Assessor Forum presentation is **Expert Report Writing Essentials**. Presented in collaboration with the Australasian College of Legal Medicine, this is an important topic we often hear medical practitioners ask for support with.

Expert Report Writing Essentials will be held on Tuesday 20 September 2022 at ReturnToWorkSA from 4pm to 7pm. More details about this event can be found in this newsletter. Assessors can still register **via Eventbrite**.

We hope to see many of you there.

### Scheme Update

On 1 August 2022, some key changes were implemented to the *Return to Work Act 2014* which have, amongst other changes to serious injury assessment, resulted in the revocation of the Second Edition Guidelines. There are some instances when assessment under the Second Edition will still be applicable. In this issue, we talk about when, and in what circumstances, the Second Edition Guidelines are used.

Following the revocation of the Second edition, there has been commitment from the Government to review and update the Guidelines.

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# IMPAIRMENT INSIDER

As part of this review, an extensive consultation process will commence with stakeholders in due course and you are encouraged to participate fully in this process.

Within this edition, we have also summarised some of the significant legal cases which may be impacting on the whole person impairment process. This, in turn, may filter down to the requests that you are receiving and may provide some context to the instructions you may receive.

As always, the Impairment Assessment Services team encourage you to send topics of interest to us at [wpi@rtwsa.com](mailto:wpi@rtwsa.com) for inclusion in the next Impairment Insider or for the next Impairment Assessor Forum.

Kind regards,

**Julianne Flower**

Leader

Scheme Support

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## Assessment of range of motion in the upper and lower extremities

Along with the request letter, you may be provided with



copies of other recent medical reports that include range of motion (ROM) measurements significantly different to those you have found on your examination.

AMA5, p533 directs *“If multiple evaluations exist, and there is inconsistency of a rating class between the findings of two*

*observers, or in the findings on separate occasions by the same observer, the results are considered invalid”.*

3.17 of the Impairment Assessment Guidelines (IAG) directs *“Although range of motion (ROM), section 17.2f, AMA5 (pp533-538) appears to be a suitable method for evaluating impairment, it may be subject to variation because of pain during motion at different times of examination, possible lack of co-operation by the person being assessed and inconsistency. If there is such inconsistency then ROM cannot be used as a valid parameter of impairment evaluation”.*

There is also a similar paragraph in the Upper Extremity chapter of the Guidelines.

If faced with this scenario, it is important that you comment on the apparent discrepancy in findings between the reports. Also consider the decision as to whether the injury has reached maximum medical improvement (MMI). If you remain of the view that MMI has been reached, consider whether an alternate method of assessment is appropriate or whether your assessment should be modified as per 1.58 of the Guidelines.



## Second Edition Impairment Assessment Guidelines

**When you need to use it.**

The Second Edition of the Impairment Assessment Guidelines was revoked on 1 August 2022. If the Second Edition applied to a worker's injury prior to this date, it will continue to apply for workers who selected their assessor prior to 1 August 2022.

For any assessments booked after 1 August 2022, the First Edition Impairment Assessment Guidelines will apply regardless of the date of injury.

The requestor should make clear in their instructions which guidelines are applicable for your scheduled assessment.

You should have received a copy of the Second Edition Guidelines in the post.



If you have not received it, please contact Impairment Assessment Services at [wpi@rtwsa.com](mailto:wpi@rtwsa.com) or phone our impairment hotline on 8238 5960 so we can check the mailing address and make sure you get one.

Alternatively, you can access an electronic copy on the [ReturnToWorkSA website](https://www.returntoworksa.com).

### Information and Training

In light of the recent changes that were made to the *Return to Work Act 2014*, training was delayed to ensure that it was to be focused on the relevant Guidelines.

As the First Edition Guidelines are now the predominant Guidelines used, we have taken this opportunity to review and refresh training associated with the first edition. In the first instance, this new online training will be used for any new assessors entering the scheme.

### Guidelines review consultation feedback

Those of you who provided feedback or submissions to the review of these Impairment Assessment Guidelines were contacted regarding the publishing of it on the website.

You can find the link to the consultation review on the [Impairment Assessment page of our website](#).

### Help and support

A guide to the differences between the First and Second editions has been created to use as a reference. You can find this on the Impairment Assessment page of the ReturnToWorkSA website. This will only be relevant to those assessments where the Second edition applies.

If you have any questions about the application of the Second edition, you can contact one of the team at [IAReports@rtwsa.com](mailto:IAReports@rtwsa.com) or by phoning our impairment hotline on **8238 5960**.

## Impairment Assessor Forum Expert Report Writing Essentials

Tuesday 20 September

4:00pm - 7:00pm

For our next Impairment Assessor Forum ReturnToWorkSA is pleased to host the Australasian College of Legal Medicine.

This Expert Report Writing Essentials session will cover:

- The role of the expert
- Preparing to write a report
- Report content and structure
- Common pitfalls
- Q&A Session.

We hope this will be an interactive and engaging session and in respect to ACLM's intellectual property, will only be offered in person.

The session will be hosted by ReturnToWorkSA at 400 King William St, Adelaide from 4:00pm to 7:00pm. Light refreshments will be provided.

[Register now](#)

## New SAET Court rules

On 3 February 2022, new Rules for the South Australian Employment Tribunal (SAET) were published in the Government Gazette and commenced immediately. The 2017 Rules and Fast Track Stream Rules 2020 were revoked by the new Rules.

The Fast Track Stream Rules were modified and incorporated into the new Rules, which also incorporate improvements to the SAET's business processes and the evolving digitisation of systems and services. Impairment Assessment request letters have now been updated with the new Rule relating to Content of expert reports, which is now Rule 66, and you will start seeing these come through with the following:

### 66. Content of expert reports

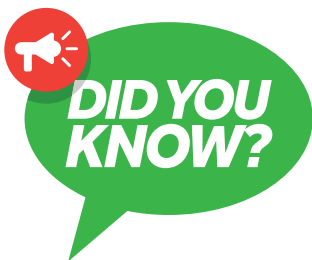
*(1) If a party proposes to rely on expert evidence in a proceeding, the party must seek a written report from the expert, which must:*

- (a) set out the expert's qualifications to make the report*
- (b) set out the facts and factual assumptions on which the report is based;*
- (c) identify any documentary materials on which the report is based;*
- (d) distinguish between objectively verifiable facts and matters of opinion that cannot be (or have not been) objectively verified;*
- (e) set out the reasoning of the expert leading from the facts and assumptions to the expert's opinion on the questions asked;*
- (f) set out the expert's opinion on the questions asked;*
- (g) be provided on the understanding and acknowledgement that the expert's primary duty is to be truthful and accurate to the Tribunal rather than to serve the interests of a party or parties;*
- (h) make reference to this rule; and*
- (i) comply with any requirements imposed by any Practice Direction.*

The complete Tribunal Rules can be found at [www.saet.sa.gov.au](http://www.saet.sa.gov.au).



## Did you know you can access previous editions of this newsletter?



Have a question about how to manage a particular assessment? Try looking through some previous editions of the Impairment Assessor Insider in case we have clarified it earlier. The **impairment assessor news and resources page** on our website contains all previous editions published since the Return to Work scheme came into effect, as well as notices, templates and other resources. If you have an idea for an article or resource you would like to see on that page, please let us know at [wpi@rtwsa.com](mailto:wpi@rtwsa.com).



## Assessor Survey



ReturnToWorkSA has recently engaged an independent research agency to seek feedback from impairment assessors on our behalf, to assist our understanding of the assessor experience in delivering impairment assessments, from request to completion.

In addition to consultation with assessors, ReturnToWorkSA has engaged with multiple stakeholders in this process, including the workers and the claims agents, to try and obtain a holistic view of the whole person impairment process from multiple perspectives.

Thank you to all those who took the time to respond and provide feedback. We are in the process of collating all the feedback and prioritising the areas in which further improvements have been identified.

One of the key goals is to design a consistent process for all workers engaging in the whole person impairment process across both claims agents. An area of focus is the request letter and providing clearer instructions and relevant supporting documentation. We are hopeful that this will provide greater clarity for assessors and workers alike.

As we continue to work through the identified areas of improvement, we will communicate with you about any changes and if they will impact you. We encourage you to provide feedback so we can continue to improve and thank you for your patience as we continue this journey.



## Assessor listings



In order to keep our public listings current, if you change your address, practice arrangements, COVID-19 vaccination requirements or alter what referrals you will accept, please email us at [wpi@rtwsa.com](mailto:wpi@rtwsa.com) or call our impairment hotline on **8238 5960**.

As we also publish information in regard to areas of special clinical interest, languages spoken and consultation in rural and remote areas, please let us know of any amendments or inclusions.

In addition to the above, it is also a requirement of your accreditation to maintain adequate insurance coverage. If you have renewed this recently, please ensure you provide us with a copy of your certificate of public liability and professional indemnity insurance.

Don't forget to also let us know if your interstate travel or location arrangements change.



## Helpful hints for submitting your report

When you have completed your examination, you are required to submit a report using the standard report template, which is available from the ReturnToWorkSA website.

To reduce delays in the compliance review process, it would be of assistance if reports could include:

- Date of the request letter and the details of the requestor. Often we will review what has been asked of you in completing your assessment. If you include the details of the requestor, we may seek clarification or make enquires with them.
- Examination details including the date of examination. This allows us to understand when the assessment was undertaken.
- Claim details (e.g. claim number). This allows us to ensure the report relates to the correct person and assists with facilitating payment of your account. It also assists with the correct entitlements being determined.

To ensure security and privacy of the worker, please ensure that one report is submitted per email. The report should be submitted as a PDF with all attachments provided to minimise delays in the review process.



### Invoicing – where to send

Invoices for impairment assessment reports are managed and paid for by the requestor, not by ReturnToWorkSA (except those reports requested by our EnABLE team). Any invoices received by ReturnToWorkSA's Impairment Assessment Team are redirected to the requestor. To avoid any delays in processing your invoice please forward your invoices directly to the requestor by emailing it *separate to the report* (in word, PDF or image file format) using the following addresses:

**Gallagher Bassett:** [invoices@gb.rtwsa.com](mailto:invoices@gb.rtwsa.com)

**EML:** [accounts@eml.rtwsa.com](mailto:accounts@eml.rtwsa.com)

**EnABLE:** [EnABLE@rtwsa.com](mailto:EnABLE@rtwsa.com)

Please ensure you have the claimant details clearly identified on the invoice. If you have approval for additional costs, this is best attached with your email to ensure prompt payment.





## Legal decision update

### Summerfield - combining of impairments

The Supreme Court's interpretation of section 22(8)(c) of the Return to Work Act 2014 ('the RTW Act') is now the definitive law in South Australia with respect to the combination of permanent impairments for the purpose of determining whole person impairments (WPI), in certain factual circumstances.

Where the individual circumstances of a claim warrant combination, this will now be outlined in the request letter.

What this means for WPI assessments moving forward:

- Requestors will continue to instruct which injuries are to be assessed separately and which are to be combined.
- For assessments that have been scheduled but not yet assessed, assessors may receive updated request letters with altered directions with regard to combining, if the Summerfield decision is relevant to the claim circumstances. If the assessor does not receive an updated request, they should proceed as directed.
- Assessors may receive requests from claims agents or self-insured employers for supplementary report, in relation to assessments previously completed, to adjust the combination of impairments. There is no requirement to reassess the worker in these circumstances. A supplementary report fee (PIA 17 or PIA 37) can be charged for these requests.

It is important to ensure the correct principles of combining are applied as outlined in the Impairment Assessment Guidelines.

Supplementary reports in response to requests to review the combination of injuries for EML, Gallagher Bassett and EnABLE must be forwarded to ReturnToWorkSA via the standard process for compliance review.



### Paschalis – deduction for unrelated impairment

*Paschalis v Return to Work Corporation of South Australia & Anor [2021] SASCFC 44* is a decision of the Full Court of the Supreme Court delivered on 25 November 2021. This was an appeal against the finding of the Full Bench of the South Australian Employment Tribunal ('SAET') that the worker had a WPI of 15% for his psychiatric injury, disentitling him to compensation as a seriously injured worker under section 21(2) of the RTW Act.

The worker sustained a psychiatric injury at work in August 2015 as a result of workplace bullying. His claim for a psychiatric injury was accepted and he subsequently sought benefits as a seriously injured worker.

In 2016 he was assessed as having a WPI of 35%, which was reduced by 20% WPI to a 15% WPI on account of a pre-existing impairment not related to the work injury. The worker disputed the deduction. In the first instance, the dispute resulted in a decision that no deduction was authorised.

The employer appealed to the Full Bench of the SAET. The Full Bench allowed the appeal and restored the 15% WPI as originally assessed.

This case raised the proper interpretation and application of subsections 22(8)(b) and (g) of the RTW Act. Subsections 22(8)(b) and (g) of the RTW Act provide as follows:

*(8) An assessment must take into account the following principles:...*

*(b) impairments from unrelated injuries or causes are to be disregarded in making an assessment;...*

*(g) any portion of an impairment that is due to a previous injury (whether or not a work injury or whether because of a pre-existing condition) that caused the worker to suffer an impairment before the relevant work injury is to be deducted for the purpose of an assessment, subject to any provision to the contrary made by the Impairment Assessment Guidelines;..*

The Full Bench reasoned that:

- Although the Deputy President was concerned that a psychiatric diagnosis of a pre-existing illness or condition was not made in relation to the worker, there was a sound evidentiary basis for finding that the worker had a pre-existing psychiatric illness or condition, namely the adjustment disorder with anxious or depressed mood and the mild alcohol use disorder that had been diagnosed.
- The assessor was entitled to have regard to the circumstances of the matter and the worker's pre-injury behaviour by reference to section 22(8)(b) of the RTW Act.
- Although the IAGs provide that a psychiatric diagnosis is required in order to make an impairment assessment for a mental injury, no corresponding requirement exists in relation to disregarding or deducting unrelated or pre-existing impairments under either subsections 22(8)(b) or (g) of the RTW Act.
- While the assessor did not make a pre-injury diagnosis, he had assessed a pre-injury impairment. This was a case in which the assessor was sufficiently confident to estimate a prior impairment and had explained how he did so.

The worker appealed the decision of the Full Court of the Supreme Court. The majority dismissed the worker's appeal.

The majority made it clear that subsections 22(8)(b) and (g) of the RTW Act express the same legislative intention: namely only impairments attributable to the relevant work injury will be assessed for compensation.

Where a pre-existing injury or cause leading to an impairment is identified as affecting an assessment of a work injury impairment, the assessor must recognise the impairment flowing from the pre-existing injury or cause, evaluate it, and deduct it from the work injury assessment. This requires a two-stage approach to the assessment of WPI, whereby the assessor must first assess the worker's WPI taking into account both the relevant work injury and any unrelated or previous injury before deducting the degree of impairment attributable to the unrelated or previous injury.

In this respect, the majority found that the RTW Act does not mandate that an assessment of an unrelated injury or cause be subject to an assessment under the IAGs in the same way as the relevant work injury must be assessed. The assessor must still estimate the degree of impairment that the unrelated injury or cause contributed to the overall WPI, relying on their expertise and whatever objective evidence remains available. The assessor must do the best he or she can on the evidence that is to hand as the RTW Act mandates it.

**Take home message:** If you are relying on specific evidence to arrive at these conclusions, this should be clearly rationalised in the content of the report. In the same light, if you have insufficient information to arrive at a conclusion for a deduction where you have been asked, an explanation as to why you have been unable to action the instruction on the provided information will likely reduce instances of clarification being sought.

## Opie – pre-existing conditions within a region

*Return to Work Corporation of South Australia v Opie & Anor [2022] SASCA 12* is a decision of the Court of Appeal delivered on 24 February 2022 which considered whether, in accordance with subsections 22(8)(b) and (g) of the RTW Act (as set out in the article about the Paschalis case in this issue) and consistent with the Impairment Assessment Guidelines ('IAGs') and the AMA5, a prior impairment to the L4/5 level of the lumbar spine should be deducted from a later impairment to the L5/S1 level of the lumbar spine.

- The worker suffered an injury in 1992 to his lower back resulting in a spinal fusion at the L5/S1 level. A determination was made pursuant to section 43 of the Workers Rehabilitation and Compensation Act 1986 ('the repealed Act') on the basis of a 15% loss of full and efficient use of his lumbar spine. This was later assessed as being a 20%WPI in accordance with the IAGs.
- In 2014 the worker sustained a further lower back injury in the course of his employment to the L4/5 disc.
- Following the 2014 injury, the worker underwent surgery in which there was an extension of the fusion from the L5/S1 level to include the L4/5 level.



- The subsequent WPI assessment assessed the current lumbar spine impairment as 29%WPI reduced by 20% WPI for pre-existing impairment.

The following dispute before the Full Bench of SAET concerned whether or not there were two equally valid “methods” for evaluating the WPI that applied to the work injury of 17 January 2014. One method was where both the pre-existing and new impairments are assessed together and then a deduction is made for the pre-existing component. The second method was to assess separately the degree of impairment that applied to the injury at the L4/5 level. The Tribunal decided that, in accordance with paragraph 1.38 of the IAGs (first edition), the worker was entitled to the benefit of the method which gave the higher level of WPI and that was achieved by applying the second method.

ReturnToWorkSA appealed the decision of the Full Bench and the appeal was heard by the Court of Appeal.

The Court of Appeal held that:

- The IAGs are drawn on the premise that they and the AMA5 address assessable body systems. The IAGs stipulate that the evaluation of impairment of the spine is to be done using the DRE method of assessment. No other method of assessment is specified.
- When undertaking the procedure necessary to evaluate impairment of the spine using the DRE method of assessment, it must be undertaken by reference to the particular region of the spine which is relevant.
- Within the relevant region of the spine (be it the lumbar, thoracic or cervical regions), separate spinal impairments are not to be combined. Rather, the highest DRE category within that region is chosen. By contrast, where there are different impairments across different spinal regions, these may be combined using the combination tables. More particularly, disc lesions at the transition zones L5/S1 are rated within the region of the lumbar spine. Depending upon whether there is any difference in activity levels before or after an injury, there is scope to allocate up to an additional 3% WPI.
- In this case, the Tribunal was not presented with more than one equally valid applicable method specified by the IAGs or AMA5 to establish the degree of the worker’s

permanent impairments within the lumbar region. It was neither necessary nor appropriate for the Full Bench to distinguish between different segment levels when determining impairment to the region of the lumbar spine.

- It follows in the circumstances of this case, paragraph 1.38 of the IAGs (first edition) was not engaged.
- Where a worker has any unrelated or previous injury to another part of the body to that of the work injury to be assessed, the assessor should not include that unrelated injury in the assessment for the work injury. However, if the unrelated or previous injury is to the same part of the body as the work injury to be assessed, the current impairment attributable to both injuries is assessed, but the degree of impairment attributable to the unrelated or previous injury is then deducted (IAGs first edition 1.23).
- The IAGs do not require that separate spinal impairments in the same spinal region, such as the lumbar spine, be combined, but rather the highest DRE category is chosen within the relevant region and, if there is an impairment from an unrelated injury or cause within that region, it is necessary that it be “disregarded (i.e. deducted)”. It follows that the Full Bench erred insofar as it found that section 22(8)(b) represented an alternative to section 22(8)(g), which must be preferred under paragraph 1.38 of the IAGs so as to ensure the assessment of a higher degree of permanent impairment. There was no scope to choose between them.

Following on from the majority decision of Paschalis, this decision reinforced the fact that subsections 22(8)(b) and (g) of the RTW Act have the same legislative intention, which is that only a work injury, or impairment to the extent that it is attributable to a work injury, is to be assessed and compensated.

Each of the regions of the spine, being the lumbar region, thoracic region and cervical region, are to be treated as single body parts, rather than broken down to individual levels of the spine.

The Full Court also made it clear that just because a worker is asymptomatic does not mean that there is no impairment to be deducted.

## Nicholson – Deduction for asymptomatic changes present

*Return to Work Corporation of South Australia v Nicholson [2022] SAET 33* is a decision of the Full Bench of the SAET delivered on 18 March 2022.

This appeal concerned two main issues. The primary issue being whether pre-existing osteoarthritis needs to be taken into account in assessing the degree of whole person impairment. The second involved the evidence relied upon to support a finding of prior impairment.

By way of background, the worker was in his mid-50s and had undertaken manual work for multiple employers throughout his working life. On 11 February 2015, the worker attended on his general practitioner due to increasing pain in his knees over the preceding two months. He was referred for imaging which identified osteoarthritis in addition to other pathology. Despite some ongoing problems with his knees, the worker continued to work.

On 19 February 2016 the worker felt his right knee give way whilst he was carrying out some lifting and was referred for further testing, which again showed the presence of osteoarthritis. He was referred for an orthopaedic review. On 13 May 2016 he underwent an arthroscopy of his right knee and on 14 October 2016 he underwent a total right knee replacement.

In December 2016, the worker was performing work at home. He walked outside to take a call from his boss and went to stand on a rock to get better reception, when his left knee gave way. A total left knee replacement was undertaken on 1 May 2017.

The worker subsequently underwent his whole person impairment assessment. In considering the impairment of the right knee, the assessor utilised a weight-bearing x-ray performed on 22 February 2016, which the assessor noted would show the loss of joint space prior to the work incident of 19 February 2016. He measured the medial joint space at 2mm. In considering the left knee, the assessor relied upon weight bearing imaging taken on 24 April 2017, which identified a gap to around 1mm. These deductions were applied in consideration of Table 17-31 of AMA5 and applied accordingly in the determination.

The worker disputed the assessments, holding that there should not have been any deductions made as he was asymptomatic and that, whilst the osteoarthritis is a physiological change, that does not make it an impairment. In other words, as asymptomatic osteoarthritis is not an impairment then for the purposes of subsections 22(8)(b) or (g) there is no relevant impairment to be disregarded or deducted.

In the first instance the trial Judge held that the osteoarthritis, which predated the respective injuries (i.e. it was pre-existing) was asymptomatic at the time of the injuries, so it was not an impairment as it only becomes an impairment once it is symptomatic. He also had concerns about the assessor's use of the x-rays to assess the pre-existing condition.

The judge's decision was appealed on the basis that the judge erred in directing that an existing condition must be symptomatic for a deduction to apply under section 22(8)(g). This position is consistent with the direction in Paschalis and Opie.

The Full Bench of the Tribunal held that the trial Judge erred in concluding that the worker's pre-existing osteoarthritis needed to be symptomatic to warrant a deduction in connection with his assessment of WPI. The Full Bench also held that if the trial Judge had concerns as to whether the x-rays provided reliable evidence to inform any deduction, he needed to consider a referral to an independent medical adviser.

## Whimpress – deduction for pre-existing non-facial scarring

*Whimpress v Return to Work Corporation of South Australia [2022] SAET 123* is a decision of the Full Bench of the SAET delivered on 25 July 2022.

This matter concerned an appeal from the worker against findings regarding his entitlement to permanent impairment and, relevantly, a cross-appeal from ReturnToWorkSA as to the application of s 22(8)(b) and s 22(8)(g) (see above) where a worker suffers pre-existing, non-facial scarring in addition to compensable non-facial scarring to be assessed.

The worker in this case suffered compensable surgical scarring on his left elbow, resulting in scarring assessed at 1% WPI. In addition, the worker had undergone a previous surgical hernia repair, which of itself was also assessed at 1% WPI. Taking the elbow scarring of 1% and applying a deduction of 1% for the hernia scar, the impairment for the compensable surgical scarring to the elbow was determined at nil.

On review, the SAET at first instance disagreed and awarded the worker 1% for scarring, relying on the decision of Gooch.

On hearing the cross-appeal, the Full Bench agreed with ReturnToWorkSA's submissions that in light of the decisions of Opie and Paschalis (see above), the previous decision of the Tribunal in Gooch could not stand.

The Full Bench followed Opie and Paschalis and found that section 22(8)(b) did not permit a PIA to be made without regard to any impairment from an unrelated injury or cause. Equally, s 22(8)(g) required that the portion of impairment for scarring due to a previous injury (whether work related or not) must be deducted. Both s 22(8)(b) and s 22(8)(g) must be applied if each are applicable (as they were in this case). The Full Bench reinforced that "the assessment of non-facial scarring is made by reference to the whole body. Scarring on any part of the body, other than the face, must be treated as a prior impairment when assessing scarring" (at paragraph 59).

Accordingly, the worker was entitled to nil for scarring.

#### Take home messages:

- Follow the letter of instruction supplied by the requestor carefully. This will provide information regarding combination and separation of injuries in addition to consideration of prior impairment. Whilst you may not always agree, this will reduce questioning and requests for clarification.
- The supporting documentation is important in providing useful information to provide consideration of earlier impairment.
- The earlier condition does not need to be symptomatic for there to be a deduction applied based on the information available.

- The RTW Act is designed to compensate for the effects of the work injury only.
- If relying on a certain piece of information to reach a conclusion, clear rationale to support your opinion is beneficial to reduce questioning.
- Paragraph 13.4 makes it clear that the skin is regarded as a single organ and all non-facial scarring is measured together as one overall impairment. That being so, prior scarring on any part of the body, other than the face, must be treated as a prior impairment when assessing scarring, so must be deducted.



## Where to get legal decisions

Assessors sometimes ask us for decisions that we discuss in these editions, so here is a guide to help you find them. This is the simple way to search for SAET decisions, but obviously you can also select Supreme Court options and search with other criteria if you know it.

1. Visit the AustLII website at [www.austlii.edu.au](http://www.austlii.edu.au)
2. Select 'SA' from top black row
3. Select 'SA Employment Tribunal (SAET) 2015'
4. Search by worker surname



## Questions, concerns or content suggestions

The whole person impairment process is extensive and prone to change in light of significant cases. We aim to make these newsletters engaging and relevant to current topics.

If you have any queries, concerns or content suggestions email us at [wpi@rtwsa.com](mailto:wpi@rtwsa.com) or phone by phoning our impairment hotline on 8238 5960.



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