



## **NT worker's compensation - injured worker loses appeal to combine permanent impairment assessments**

**Date: Saturday June 22, 2024**

In November 2023, the Work Health Court (Northern Territory) denied an injured worker's claim to combine two permanent impairment assessments from two separate [NT worker's compensation claims](#). The worker appealed that decision to the NT Supreme Court. The Supreme Court upheld the original finding, dismissing the injured worker's appeal.

### **Background to the worker's compensation claims**

Ms Woods suffered a psychological injury whilst employed as a teacher with the NT Government (Department of Education) at Katherine High School in February 2017 (the 'First Injury').

She applied for and received worker's compensation benefits for her injury, including weekly payments (for lost wages) and medical expenses. She was on worker's compensation for about 3 months and then returned to full-time work.

In June 2020, whilst working at Palmerston College, Ms Woods suffered a further psychological injury (the 'Second Injury'). She lodged a new worker's compensation claim.

Liability for this Second Injury was initially disputed by the employer (NT Government) but ultimately, after the worker issued court proceedings, the claim was accepted and benefits paid under the Act.

### **Worker determined to have a permanent impairment due to both incidents**

A permanent impairment entitlement is a lump sum payment where a worker has an accepted worker's compensation claim, and the injury is considered permanent. It is separate from other entitlements like weekly payments (for lost wages) and medical expenses.

The worker's solicitors obtained medical reports from a psychiatrist, Dr Takyar, which dealt with assessing the degree of permanent impairment as a result of each separate injury.

Whilst the employer disputed the percentages as assessed by Dr Takyar, ultimately, it was accepted that Ms Woods sustained a 9% permanent impairment due to the First Injury and 13% as a result of the Second Injury.

## The Work Health Court case

The initial Work Health Court case was in relation to the question as to whether it was permissible to combine the two assessments to arrive at the one figure of 22% permanent impairment.

Importantly, the *Return to Work Act 1986* ('the Act') allows quite a deal more compensation for higher permanent impairment assessments, particularly those greater than 15%.

Indeed, 15% is something of a magic figure when it comes to working out entitlements under the NT worker's compensation scheme as a worker will also be entitled to significantly greater weekly payments if they are assessed, or likely to be assessed at or more than 15% permanent impairment.

In this particular case, two separate claims of 9% and 13% would deliver less compensation than a single permanent impairment assessment of 22%.

The [Work Health Court denied the injured worker's claim](#) to combine the assessments.

## The NT Supreme Court appeal

The worker appealed that decision to the NT Supreme Court. You can read more about disputing worker's compensation decisions in our earlier blog, ["Disputing a worker's compensation claim decision in the Northern Territory"](#).

On 26 April 2024, the Supreme Court handed down its decision to dismiss the injured worker's appeal. The court determined that the worker was not able to combine assessments of permanent impairment which reflected two separate worker's compensation claims.

## The legal argument used by the injured worker's lawyer

It was something of a novel argument put on Ms Woods' behalf but one worth making all the same. It was, however, a rather technical legal point that they asked the court to accept. Ultimately, it was unsuccessful.

Essentially, her lawyer argued that the relevant sections of the Act (and the relevant Guidelines) should be interpreted so that any reference to 'pre-existing impairments' should only be restricted to such impairments which were not due to other accepted work injuries.

Notably, if you suffer a workplace injury and you are eligible to claim a permanent impairment payout, any pre-existing injury will be considered, and a reduction in the permanent impairment payment may be considered. Again, this is highly technical. It is crucial that you seek legal advice from a lawyer with expertise in NT worker's compensation claims if you experience any barriers to your permanent impairment claim.

## What does this decision mean for workers injured in the NT?

The case does serve to highlight some important things about the NT worker's compensation scheme. It's important to note that there is no ability for an injured worker to sue their employer if they consider they were injured because of some act of negligence.

However, the NT worker's compensation scheme does provide the potential for some workers to continue to be paid significant benefits if it can be shown that they have suffered a work injury that is or will most probably be assessed at 15% or greater whole-person-impairment (WPI) by reference to the NT Guidelines.

We have significant experience in NT worker's compensation claims. We offer a first free interview, so it costs you nothing to find out where you stand.

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