

The requirement for causation following Hannaford

By David Richards*

The Federal Court in *Hannaford v Telstra Corporation Limited* (2005) FCA 1298 has recently held that it is not open to a decision maker to make a finding that an Applicant has never suffered from an injury, related to her/his employment, if there has been an earlier acceptance that the employee did suffer a work related injury under s.14 of the Safety Rehabilitation and Compensation Act 1988 ('the SRC Act'). The Federal Court in *Hannaford* also found that a decision maker is prohibited from making a decision inconsistent with the earlier accepted condition. This interpretation of the SRC Act does not mean that the decision maker or Tribunal is bound to find that the injured employee's symptoms are related to the compensable condition, it merely requires the decision maker to consider causation, and at the same time prohibits inconsistency with the earlier decision to accept liability. Therefore the question is; does the employees' present symptoms RESULT FROM the earlier accepted compensable injury? If yes, the symptoms are compensable if they satisfy an entitlement under the SRC Act. If no, the decision maker can not have regard to the earlier s.14 decision when determining an entitlement to compensation under the SRC Act.

THE LAW IN HANNAFORD

On 16 September 2005 Moore J handed down the decision of *Hannaford*. This decision has ended (for now) a debate as to whether a decision maker, when determining an entitlement to compensation for incapacity, medical treatment costs or permanent impairment, can determine that a worker had never suffered an injury, or can make a finding of fact inconsistent with an earlier acceptance of liability under s.14. Moore J at paragraph 46 held:

46. In my opinion, it was not open to the Tribunal to review findings on the question of whether the Applicant had suffered RRF [Ross River Fever] and thereby make findings contrary to those underpinning the earlier determinations under s.14. ...

The *Hannaford* decision has had the effect of



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overturning the law in *Power v Comcare* (1998) 89 FCR 514. *Power* was a decision of a single Judge, handed down on 20 November 1998. Other decisions relevant to this principle and inconsistent with the decision in *Power* include *Lees v Comcare* (1999) FCA 553, a decision of Wilcox, Branson and Tamberlain J handed down on 7 June 2003, *Australian Postal Corporation v Oudyn* (2003) FCA 318 a decision of Cooper J handed down on 10 April 2003 and *Duong v Australian Postal Corporation* (2005) FCA 991, a decision of Edmonds J handed down on 20 July 2005.

Moore J in *Hannaford* referred to the *Lees* decision (also quoted by Edmonds J in *Duong* at paragraphs 40 and 41) in support of his decision, that is, that a decision maker cannot make a decision inconsistent with an earlier s.14 determination: The Full Court in *Lees* held:

34. The definition of "determination" makes it plain that it is part of the scheme of the Act for determinations to be made under the various sections referred to therein. In particular, the definition reveals that a determination may be made under s.14 of the Act. A determination under s.14 cannot amount to more than a determination that Comcare "is liable to pay compensation in accordance with this Act" in respect of a particular injury. The amount of compensation which Comcare will be liable to pay, the person or persons to whom the compensation will be payable and the time or times at which Comcare's liability will give rise to a present obligation to make payments are, as the above examination of the structure of the Act reveals, all matters to be determined under other provisions of the Act.

48 In our view, his Honour was plainly right in so concluding. As is mentioned above, on 16 October 1995 an authorised officer of

Comcare had determined pursuant to s.14 of the Act that Comcare was liable to pay compensation in accordance with the Act to Ms Lees in respect of the injury suffered by her. That determination had not been the subject of reconsideration under s 62 of the Act and was therefore not a “reviewable decision” for the purposes of s 64 of the Act. The determination under s.14 established, amongst other things, that Comcare would be liable to pay compensation to Ms Lees under s 24 of the Act if the injury resulted in permanent impairment. We interpolate that we do not read s 24(1) of the Act as a second source of liability to pay compensation in respect of an injury to an employee resulting in impairment. We see that liability as being created by s.14 of the Act. Section 24 we understand as being intended to define the nature and extent of the liability to pay compensation in respect of an injury which results in permanent impairment.

The Full Court at paragraph 50 in Lees clearly sets out the issues for determination by a decision maker where there is an earlier s.14 determination and where that determination is not the subject of review. The Full Court held:

50 The only issues under s 24 of the Act which required determination in Ms Lees’ case were the issues of whether she had a permanent impairment and, if she did, the amount of compensation payable under the section in respect of that impairment.

The Federal Court in Oudyn followed this reasoning. At paragraph 31 Cooper J held:

31 The content, duration and means of satisfying the liability to pay compensation is to be found and worked out by determinations made under other sections of the Act including s 24. These determinations give substance to the liability “... to pay compensation in accordance with this Act”, provided for in s.14. They do not require that the determination under s.14 of the Act to accept liability be reconsidered or revoked when the liability to pay under s.14 is satisfied by payment in accordance with the requirements of one or more of the other sections of the Act. The liability under s.14 of the Act to pay compensation stands until it is discharged in accordance with the Act. Once discharged it is terminated.

Cooper J in Oudyn went on at paragraph 38 to state:

38 Until the determination of 18 May 2000, the existing determination under s.14 established that APC would be liable to pay compensation

to Mr Oudyn if the injury of 2 August 1999 resulted in permanent impairment. The only issues which required determination under s 24 of the Act were whether or not Mr Oudyn had a permanent impairment and, if he did, the amount payable under s 24 in respect of that impairment: Lees pars [48], [50].

As can be seen above, Moore J in Hannaford has adopted and followed the earlier decisions of Lees and Oudyn in finding that a decision maker must have regard to an earlier s.14 decision.

THE ISSUES TO BE DETERMINED

Following Hannaford the only issues for determination in a permanent impairment claim (s.24) by a decision maker where a s.14 determination is not the subject of review are;

- A. Whether the accepted injury results in permanent impairment; and
- B. If so, whether the impairment is permanent and the degree of the impairment pursuant to the Permanent Impairment Guide.

Following Hannaford the only issues for determination in a claim for incapacity payments (s.19) by a decision maker where a s.14 determination is not the subject of review are;

- A Whether the accepted injury results in incapacity; and
- B. If so, whether the incapacity is total or partial incapacity.

Following Hannaford the only issues for determination in a claim for medical expenses (s.16) by a decision maker where a s.14 determination is not the subject of review are;

- A. Whether the Applicant receives medical expenses as a result of the accepted injury; and
- B. If so, whether the medical expenses are reasonable.

RESULTS FROM OR CAUSATION REQUIREMENT

The “live” issue for a decision maker is not what condition the Applicant previously suffered, as this is an accepted condition not the subject of review, or what condition the Applicant suffers from presently, but whether the Applicant suffers permanent impairment, incapacity or requires medical treatment which RESULTS FROM the accepted s.14 determination.

Causation, and the term “RESULTS FROM”, was considered in the 1996 Federal Court decision of Jenkinson J in *Comcare v Amorebieta* (1996) FCA 312. Jenkinson J discussed at some length from

paragraphs 7 to 10 the meaning of “results from” referring to both incapacity and impairment under the SRC Act.

The reasoning of Jenkinson J in *Amorebieta* on causation with regard to permanent impairment relied on earlier authorities on causation relating to incapacity. As such, the authority in *Amorebieta* on causation for permanent impairment is just as relevant to causation for incapacity, and following from this, it is also just as relevant to medical treatment costs. A summary of the principles in determining causation from *Amorebieta* are as follows:


- A. The term “Results From” under the SRC Act means the same as “Results From” under common law, that is that the legal concept of causation when applied in the field of personal injury takes the person injured as it finds him/her, with all his/her pre-dispositions and susceptibilities.
- B. Incapacity or permanent impairment is compensable under the SRC Act even where the work injury itself would not amount to or result in incapacity or permanent impairment if the work injury when combined with the non work injury results in incapacity or permanent impairment.
- C. An aggravation which was contributed to in a material degree by the employee’s employment of a disease wholly unrelated causally to employment is compensable if the aggravation results in incapacity or permanent impairment.
- D. The degree of permanent impairment, following an aggravation, is the total permanent impairment regardless of what degree the impairment was prior to the aggravation and what degree of impairment was caused by the work aggravation.
- E. An aggravation of a pre-existing condition is compensable even where a decision maker of Tribunal is unable to identify whether the injury changed the underlying pathology of a condition (See also *Comcare v Mooi* 1996 69 FCR at page 439).
- F. An aggravation resulting in restriction of movement is compensable whether caused by pain or by physical incapacity.
- G. An aggravation resulting in restriction of movement whether caused by pain or physical incapacity should be assessed under the appropriate Tables under the Guide to the Assessment of Permanent Impairment.

CONCLUSION

Following the *Hannaford* decision, and accepting the law in *Amorebieta* relating to causation, the issues for determination by a decision maker where there has been an earlier s.14 decision accepting liability is now clear. A decision maker when determining a claim for payment of compensation such as medical treatment costs, incapacity payments or permanent impairment, must first determine what symptoms the injured employee is suffering. The decision maker must then make a finding of fact on whether these symptoms RESULT FROM the accepted work related injury. If the symptoms result from the earlier accepted condition then the claim must be accepted regardless of the issue as to whether the original claim under s.14 accepting the work related condition was correct. If the symptoms suffered by the employee do not result from the earlier accepted condition, then the decision maker must determine the current claim for compensation disregarding the earlier determination which accepted liability.

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