Communications with Permanent Impairment Assessors

In three key judgments, the South Australian Employment Tribunal (**the Tribunal**) has highlighted that a "unilateral communication" in the permanent impairment process is impermissible.

Unilateral communication is a communication between only one party to a claim and the permanent impermanent assessor.

For example, in *Canales-Cordova*, the Compensating Authority wrote to the permanent impairment assessor following the provision of his assessment report to identify "issues" with the assessment. The assessor responded to the identified issues but maintained the original assessment. The Compensating Authority then obtained a second opinion and provided it to the assessor inviting him again to change the opinion. The permanent impairment assessor ultimately provided an altered report, but in the covering email wrote "*I give up.*"

The Tribunal has held that unilateral communication is not permitted where the permanent impairment assessor has provided their assessment report, and the nature of the communication may seek to alter or guide their assessment.

A report obtained by communication between only one party and the permanent impairment assessor, following the provision of a permanent impairment assessment report, may be excluded from evidence before the Tribunal on the basis of unfairness to the other party.

The key practical implications for self-insured employers are:

1. The Tribunal views the role of the permanent impairment assessor as one of independent arbitrator as the decision of a permanent impairment assessor is binding and can only be reviewed by the Tribunal.
2. All parties should be aware of, and consent to, any communication with a permanent impairment assessor. Self-insured employers should ensure to communicate with the worker, or the worker's solicitor, to notify them of the intention to seek a clarifying report and provide a draft letter for their consent.
3. When requesting a permanent impairment assessment, the letter of request must draw the assessor's attention to all relevant requirements under the Return to Work Act 2014 and the Impairment Assessment Guidelines.

The Tribunal's decisions serve as a reminder to self-insured employers to review their policies and procedures and template letters relating to permanent impairment assessments so as to avoid the risk that evidence is excluded by the Tribunal.

The relevant decisions are: *Frkic v Return to Work SA [2020] SAET 16, Canales-Cordova v Return to Work SA [2020] S AET 8 and Palios v Return to Work SA [2019] SAET 224.*

Joe Parisi | Principal
+61 8 8215 7006
jparisi@gclegal.com.au

Tahnee Virgin | Lawyer
+61 8 8215 7042
tvirgin@gclegal.com.au