



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### KENNETH CANUTE v COMCARE

Comcare must assess compensation for a workplace physical injury and a psychiatric injury separately, rather than treat the second injury as merely a cumulative effect of the first, the High Court of Australia held today.

Mr Canute worked for the Department of Defence as a civilian cleaning and maintenance contractor. He injured his back at work in 1997 and again in 1998. He was unable to work for two years after the second incident. Comcare allowed his claim for his back injury. In 1999 Mr Canute lodged a claim for permanent injury compensation. A doctor assessed him as having 15 per cent whole person impairment with respect to his back injury and 10 per cent for his right leg, in which he suffered chronic pain radiating from his back. The doctor assessed that 50 per cent of his condition existed before the work injuries. Comcare accordingly made an award of 12 per cent impairment under section 24 of the *Safety, Rehabilitation and Compensation Act*, which amounted to \$13,731.28, plus \$15,876.80 for non-economic loss under section 27 of the Act. In 2002, he lodged a second claim for permanent injury compensation after being diagnosed as having an adjustment disorder with depression. Comcare denied liability on the basis that Mr Canute's whole person impairment had not increased by at least 10 per cent, as required by section 25(4) of the Act. This states that where Comcare has made a final assessment of an employee's degree of permanent impairment, no further amounts shall be payable in respect of a subsequent increase in the degree of impairment unless the increase is 10 per cent or more.

The Administrative Appeals Tribunal affirmed Comcare's decision to deny Mr Canute further lump sum compensation for the psychiatric injury. It found that combining the 12 per cent impairment for the back injury with the 10 per cent impairment for the adjustment disorder produced a 21 per cent whole person impairment, which was an increase of less than the 10 per cent required for further compensation. In the Federal Court, Justice Graham Hill overturned the AAT's determination. He held that the AAT had erred in failing to consider whether the chronic adjustment disorder was itself "an injury" for the purposes of the Act. The fact that the two injuries arose from a single event was not relevant as the Act is concerned with injuries rather than incidents. Justice Hill's decision was overturned by a majority of the Full Court. Mr Canute then appealed to the High Court.

The Court unanimously allowed the appeal and directed that Comcare determine an amount payable to Mr Canute in accordance with sections 24 and 27 of the Act for an adjustment disorder resulting in a degree of permanent impairment of 10 per cent. The Court held that the AAT had misapplied the concept of "injury" as defined by the Act and restored Justice Hill's decision. It held that the Full Court majority had departed from the terms of section 25(4) and misconstrued the Act by describing the disorder as contributing to a subsequent increase in the degree of impairment attributable to the earlier back injury, rather than as a separate "injury" resulting in an impairment giving rise to a separate liability under section 24. The Court held that the Act makes no distinction between "an injury" and a consequential or secondary injury. As the adjustment disorder was a separate injury, not related to the impairments resulting from the back injury, section 25(4) did not apply.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*