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## Workers Compensation Law E-alert

### Wattyl Australia Pty Limited –v– McArthur

Despite being described as a “*confusing, maze of statutory provisions*” the Court of Appeal has agreed with submissions made by Hunt & Hunt’s Anthony Morrissey, on behalf of the employer Wattyl, that a plaintiff **must** make a claim for lump sum compensation, before or at the same time as bringing proceedings for a workplace injury and is required to comply with all of the pre-trial procedures prescribed in the *Workplace Injury Management Act* “*WIM Act*”.

The worker suffered an injury on 24 March 2000 when he was driving his employer’s motor vehicle. A container of solvent overturned in the boot of the vehicle. It emitted fumes, the fumes were inhaled by the worker and, it was claimed, that he lost control of the vehicle and crashed into a tree.

The worker originally commenced Motor Accident proceedings however, in view of recent Court of Appeal and High Court decisions he decided he would be better off bringing a claim under the *Workers Compensation Act*.

The worker did not comply with the procedural requirements. On behalf of the employer, we filed a notice of motion seeking the work injury damages claim be dismissed for failure to comply with the *WIM Act* and the *Workers Compensation Act*.

At first instance the Judge accepted the worker’s submission that he had not sought compensation pursuant to section 66, there was no entitlement to lump sum compensation for his type of injury as at March 2000, and therefore section 280A of the *WIM Act* did not apply. In the alternative, the judge accepted the argument that he had elected to “*abandon*” his claim pursuant to section 66, and this did not prevent him from seeking work injury damages for past and future economic loss, and medical expenses.

In a majority decision the Court of Appeal agreed section 280A of the *WIM Act* provides the gateway into the making of a common law claim which is not maintainable unless the worker has satisfied the 15% threshold for permanent impairment. The intention of Parliament was that the assessment of the degree of permanent impairment was to be made at the same time for each, a claim for lump sum compensation and for work injury damages.

It stated:

*“Unless there is a gateway into that assessment process the claim cannot succeed.”*

This case provides some certainty to the application of the legislative requirements in a year dominated by decisions such as *Tan –v– NAB* which questioned when and where the *Workers Compensation Act*, and the *Workplace Injury Management Act* apply.

The lesson learned from this decision, a worker cannot avoid compliance with all of the pre-trial procedures prescribed by the *WIM Act*.

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