



COVERED CASES

Case Snippet

MARKE v WORKCOVER (E R SILVA PTY LTD)

Full Bench of WCT

[2000] SAWCT 138

Has the door been finally closed on worker's attempting to obtain a lump sum for loss of capacity to engage in sexual intercourse?

In this the worker asserted that the removal of the impairment "loss of capacity to engage in sexual intercourse" from Schedule 3 of the Act did not necessarily mean that such losses do not give rise to an entitlement but rather that they should be assessed in accordance with the AMA Guides!

The Full Bench noted that "permanent loss of capacity to engage in sexual intercourse" had remained within Schedule 3 after the amendments to Section 43 in 1992 and 1993.

These amendments inserted a new list of stipulated impairments (including loss of capacity to engage in sexual intercourse) and provided that the impairment of physical or sensory faculty not otherwise stipulated was to be assessed in accordance with the AMA Guides. It followed then that the subsequent removal of the loss of capacity to engage in sexual intercourse from the stipulated impairments also removed an entitlement to compensation pursuant to Section 43 for such a loss.

Their Honours continued that in any event the Guides do not allow for a loss of sexual incapacity to be assessed separately but rather require it to be assessed as a by-product of sexual dysfunction arising out of spinal cord disorders or disabilities directly affecting male and female reproductive organs. Loss of genital organs and impairment of the cervical, thoracic and lumbar spine are all impairments stipulated in Schedule 3. Consequently, there is no need to refer to the Guides for such losses.