

# Case gives new hope to injured workers

By Michael Inman  
Court Reporter

A former Canberra firefighter who was injured on the job revived scores of rejected Comcare claims when he was cleared to recontest his workers' compensation case against the Commonwealth.

In a decision that could throw the doors open to injured workers, the Federal Court on Friday found the workplace insurer's assessment procedures for leg injuries were invalid.

It is the second time in three years that Comcare has been forced to reassess its impairment assessment regime.

Wayne Lilley was diagnosed with compartment syndrome, pain that affects the legs when running and walking, in 2005 and underwent surgery. Comcare accepted liability for the injury.

In 2009, Mr Lilley lodged a claim for permanent impairment compensation with the workers compensation authority.

Mr Lilley said his injuries were so severe that he had permanent pain and numbness in his legs which interfered with his ability to walk for more than five minutes at a time, go up or down stairs and run.

Comcare rejected his claim on the basis he did not meet the minimum 10 per cent threshold for permanent impairment compensation.

Mr Lilley unsuccessfully took the matter to the Administrative Appeals Tribunal in 2011, which backed Comcare's decision.

But the Federal Court of Australia on Friday allowed the appeal and sent the matter back to the tribunal.

Justice Steven Rares found

Comcare's guide to assessing permanent impairment was invalid.

"I am of the opinion that [the Comcare impairment guide] does not fix an objective standard for the number of stairs or the characteristics of the ramp that a claimant must be unable to negotiate without use of an external aid," Justice Rares wrote in his judgment.

"Accordingly, the criteria for 5 per cent and 10 per cent impairment are invalid since they cannot operate without two minimum criteria."

Justice Rares said there was no requirement for doctors to test walking or stair climbing.

"The tribunal" wrongly took the view that each of the activities of ability to walk and climb stairs and the pace of walking required clinical testing. The tribunal asked itself the wrong question as to the evidence necessary to support a claim for permanent impairment."

Mr Lilley's lawyer Daniel Steiner said the decision meant employees with leg injuries are entitled to claim permanent impairment compensation, including workers who have previously had their claims rejected by Comcare or the Administrative Appeals Tribunal.

Mr Steiner said the decision would force Comcare to acknowledge the restrictive and unfair nature of its impairment assessment regime for the second time in three years.

"The first time Comcare was forced to do this was after the decision of Comcare v Broadhurst in which the Full Federal Court of Australia held the table in the guide concerning back injuries was also invalid," Mr Steiner said.