

**CASES AND TRIBUNAL DECISIONS**

# Total and Permanent Disability (TPD) benefit under the State Public Superannuation Scheme

*Board of Trustees of the State Public Sector Superannuation Scheme v Edwin Gomez* [2018] QCA 67

[Link to decision](#)

Mr Gomez had originally appealed to the Supreme Court of Queensland following a decline of his claim for a Total and Permanent Disability (TPD) benefit under the state public superannuation scheme. His claim had been considered three times by the Board, the first 2 decisions were decline determinations following a full consideration of the merits of the claim and the third was a decision to not further review the claim.

At first instance, His Honour Justice Boddice found that the first 2 decisions were sound, however the third decision of the trustee not to further reconsider the claim on its merits in light of the new material provided, failed the appropriate test. The test was whether, by reason of circumstances occurring since the previous application or by reason of evidence not reasonably available at the time of the previous application there was a reasonable possibility of a different result. If so, having regard to the interests of the applicant and the interest of other members, that possibility justified the expense to the trustee of reconsidering the claim including such other investigations as may be warranted. Having come to that conclusion His Honour returned the matter to the trustee for its re-consideration.

The trustee appealed the finding as to the 3rd decision and Mr Gomez cross-appealed the finding as to the 2nd decision and specific findings as to the validity of the delegation by the Board and orders as to costs.

Both the appeal and cross-appeal were dismissed.

Interestingly, the comments of Boddice J that there was no utility in determining the challenge to the 1st decision once the 2nd decision was made was not the subject of complaint in the appeal.

This suggests that the different approaches to this issue across courts remain to be resolved.

Henry J. in a judgement with which the other members of the Court of Appeal agreed, upheld Boddice J's application of the test set out in *Gilberg v Maritime Super Pty Ltd* [2009] NSWCA 325[22], for determining the circumstances in which the emergence of further information may warrant reconsideration of a previously unsuccessful application for the payment of a TPD benefit. The test propounded for determining whether to reconsider an application – a reasonable possibility of a different result, was said to derive logically from the duty to provide properly informed consideration to an application. "If the further information indicates a reasonable possibility of a different result then, until such time as it is considered in addition to the earlier considered information, it can no longer be said the Board had met its duty of giving properly informed consideration to the application".

In respect of the extent to which the trustee should make further inquiries in order to meet its duty to give properly informed consideration to an application, Henry J. specifically observed that the "duty to give properly informed consideration does not oblige the Board to inquire to the point of factual perfection". While the extent of those inquiries will vary with the circumstances of the case, the ultimate point of any further inquiry is to enable the Board to meet its duty to give properly informed consideration to an application.