



## Précis Paper

### Jurisdiction of Tribunals to make Retrospective Determinations

*Motor Accidents Insurance Board v Britton* [2017] TASSC 60

1. In this case it was held that the Tasmanian Motor Accidents Compensation Tribunal could make a retrospective determination as to the eligibility of the respondent to receive scheduled benefits under the Act. It is likely that this finding will be applicable in other jurisdictions.

#### **Discussion Includes**

- The Facts in *Motor Accidents Insurance Board v Britton* [2017] TASSC 60
- The jurisdictional question about the timeframe
- The issues on appeal
- The extension of time issue
- What else practitioners can take away from the case

# Précis Paper

## Video Title

2. In this edition of BenchTV, Natalie Everett (barrister) and Corinne Deall (solicitor) discuss a recent Tasmanian Supreme Court decision and its determination that the Tasmanian Motor Accidents Compensation Tribunal could make a retrospective determination as to eligibility for a disability allowance.
3. In *Motor Accidents Insurance Board v Britton* [2017] TASSC 60, the Supreme Court of Tasmania was asked to determine the scope of the right of appeal conferred by s 28(6) of the *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas) ("the Act"), and as to the extent of the jurisdiction of the Motor Accidents Compensation Tribunal ('the Tribunal) to make a retrospective determination as to the eligibility of the respondent to receive scheduled benefits under the Act.

### The Facts

4. Ms Britton had been driving her car when she hit a cow and suffered injuries. The Tasmania compulsory third party insurer, the Motor Accidents Insurance Board ('the Board'), paid the employed person's allowance (the 'EPA') to Ms Britton. The EPA is a disability allowance for those persons who, by virtue of their injuries that they receive in a motor vehicle accident, are unable to work, and, is paid at the rate of 80% of the applicant's normal wage. The Board paid the allowance for approximately two years after the accident. Ms Britton then received a letter stating that she was not entitled to any further allowance.
5. Ms Britton purported to refer to the Tribunal the matter of her right to be paid a disability allowance by way of a notice which was filed out of time. At this stage, Ms Britton was self-represented. The Tribunal dismissed the application on the basis that it had no jurisdiction: *Britton v Motor Accidents Insurance Board* [2015] TASMACT 4.
6. Ms Britton then sought legal advice and her solicitors wrote to the Board on her behalf attaching medical certificates claiming a disability allowance on the basis that she was wholly disabled. This application was refused. This decision was then referred to the Tribunal.
7. At this stage, the Board accepted that Ms Britton was, in fact, entitled to receive a disability allowance but the parties were unable to agree as to the date from which the Tribunal could require the Board to make payments.

### The jurisdictional question about the timeframe

8. The Board argued that the Tribunal had no jurisdiction to order payments prospectively but could make retrospective orders. Following a one day hearing, the Tribunal determined that it did have jurisdiction to make an order for the applicant's entitlement for the entirety of the disputed period.

9. The Board filed a notice of appeal.

#### The issues on appeal

10. The Court was required to determine whether the Board had a right of appeal pursuant to s 28 of the *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas).
11. The Court was accordingly required to rule on "what is a determination" according to the relevant provision. At [8] the Court held "...In their ordinary meaning, the words "such determination" must, in my view, refer to a final determination that resolves the dispute referred to the Tribunal."
12. The Court applied the case of *Re a Reference to the Motor Accidents Compensation Tribunal by Sharman* (unreported, 5 December 2014) in which Estcourt J at [20] said:  
...The language of those provisions and the scheme of the simple one section legislative regime for the operation of the Tribunal are not capable in my view of extending a right of appeal under s 28(6) beyond decisions of the Tribunal that are final or that effectively determine the reference to it. In particular they do not provide a right of appeal against a decision of the Tribunal as to the ambit of its own jurisdiction.
13. Accordingly, the Court effectively held that if the Tribunal wants to set itself its own jurisdiction, then there could be no appeal against that. A right of appeal against interlocutory determinations could result in fragmented of Tribunal proceedings. The appeal was dismissed.
14. In relation to the substantive appeal, at [31] the Court held:  
There is nothing in the Act that suggests that a determination by the Board that a person is ineligible for a particular allowance is final or irreversible. There is nothing in the Act or any regulations that imposes an onus of proof on claimants. There must be many situations in which evidence as to the extent of a person's disabilities becomes stronger as time goes on. It follows that great injustices could occur if the Board were unable to reconsider, vary or reverse its own decisions.
15. And, at [33]: "...There is nothing in the relevant legislation that expressly or impliedly indicates that decisions of the Board may not later be varied or reversed by the Board, or by the Tribunal standing in the shoes of the Board."

#### The extension of time issue

16. Factors relevant to such a consideration include: there was there a prima facie or arguable case; what was the explanation for the delay; was there prejudice to the other party because of the delay.
17. The legislation is benevolent legislation that is intended to assist a person - its statutory interpretation will be skewed in favour of the applicant.
18. Tribunals are meant to have a broad discretion unless it's confined in certain areas.

What else practitioners can take away from the case

19. Going back to basics: where is the power to bring the appeal; where is the power for the Court to decide the issues.

## **BIOGRAPHY**

### Natalie Everett

Barrister – Bartletts Barristers and Solicitors, Tasmania

Natalie was admitted to practice as a barrister and solicitor in the Supreme Court of Tasmania in 2003. She is also admitted to the roll of practitioners in the ACT and the High Court of Australia. Natalie spent a significant part of her career practicing as a barrister and solicitor in the criminal practice division of the Legal Aid Commission of Tasmania where she undertook trial and appellate work. She has also served as a Commissioner on the Board of the Legal Aid Commission of Tasmania. Upon leaving the Legal Aid Commission, Natalie commenced as an Associate at Bartletts Barristers and Solicitors in Tasmania and primarily practices in the area of Civil Litigation with a focus on workers' compensation and personal injury law.

### Corinne Deall

Solicitor – AR Conolly and Company Lawyers, Sydney

Corinne is a solicitor of A R Conolly and Company Lawyers with advocacy experience in the NSW Civil and Administrative Tribunal. She graduated with a Bachelor of Laws with Honours and a Bachelor of Arts - Psychology from Macquarie University. Corinne is passionate about commercial litigation and is particularly interested in insurance.

## **BIBLIOGRAPHY**

### Focus Case

*Motor Accidents Insurance Board v Britton* [2017] TASSC 60

### Benchmark Link

[https://benchmarkinc.com.au/benchmark/composite/benchmark\\_20-10-2017\\_insurance\\_banking\\_construction\\_government.pdf](https://benchmarkinc.com.au/benchmark/composite/benchmark_20-10-2017_insurance_banking_construction_government.pdf)

### Judgment Link

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASSC/2017/60.html>

### Cases

*Britton v Motor Accidents Insurance Board* [2015] TASMACT 4.

*Re a Reference to the Motor Accidents Compensation Tribunal by Sharman* (unreported, 5 December 2014)

### Legislation

*Motor Accidents (Liabilities and Compensation) Act 1973 (Tas)*

*Workers Rehabilitation and Compensation Act 1988 (Tas)*

