WORKERS COMPENSATION COMMISSION

STATEMENT OF REASONS FOR DECISION OF THE APPEAL PANEL IN RELATION TO A MEDICAL DISPUTE

Matter Number:	**M1-2398/20**
Appellant:	**Inner West Council**
Respondent:	**Peter James Clement**
Date of Decision:	**23 December 2020**
Citation No:	**[2020] NSWWCCMA 182**

Appeal Panel:	
Arbitrator:	**Mr William Dalley**
Approved Medical Specialist:	**Dr John Ashwell**
Approved Medical Specialist:	**Dr Brian Stephenson**

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 29 September 2020 the appellant, Inner West Council, lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Ian Meakin, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 2 September 2020.

2. The appellant relies on the following grounds of appeal under section 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):

    - the assessment was made on the basis of incorrect criteria,
    - the MAC contains a demonstrable error.

3. The Registrar is satisfied that, on the face of the application, at least one ground of appeal has been made out. The Appeal Panel has conducted a review of the original medical assessment but limited to the grounds of appeal on which the appeal is made.

4. The WorkCover Medical Assessment Guidelines set out the practice and procedure in relation to the medical appeal process under section 328 of the 1998 Act. An Appeal Panel determines its own procedures in accordance with the WorkCover Medical Assessment Guidelines.

5. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment, 4th* ed 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment,* 5th ed (AMA 5).

RELEVANT FACTUAL BACKGROUND

6. The respondent to the appeal, Peter James Clement, commenced employment with what was then Leichhardt Council in 1980 as a labourer in the parks and gardens section. On 17 November 1989 he suffered an injury to his left knee in the course of his employment. He underwent an arthroscopic operative procedure on 27 November 1989 which disclosed significant pathology. Mr Clement had suffered an earlier injury to his left knee in 1979 when playing rugby league but symptoms from that injury had resolved.

7. Mr Clement returned to his pre-accident duties. In 1990 he transferred to the waste services area and suffered a further injury to the left knee on 17 May 1993 when stepping down from the back of a garbage truck. He was again referred to Dr Bornstein. X-ray examination demonstrated early osteoarthritic change in the medial compartment of the knee said to be due to peripheral osteophytes. Arthrogram reported old post-operative changes relating to the lateral meniscus.

8. Dr Bornstein performed a further arthroscopy on the left knee on 25 June 1993 which revealed marked wear changes on the medial femoral condyle down to bare bone. The knee was debrided and washed out with an osteoplasty of the medial femoral condyle. Mr Clement returned to work but continued to suffer symptoms in the left knee which gradually worsened.

9. Mr Clement was referred by his general practitioner to another orthopaedic surgeon, Dr Rahme, in November 2017. X-rays taken in November 2017 showed established osteoarthritis in the left knee with narrowing of the medial joint space. Mr Clement's general practitioner referred him to another orthopaedic surgeon, Dr Rahme. MRI scans revealed significant grade 4 degenerative change in the medial compartment with grade 12 grade 2 changes in the lateral compartment in the patellofemoral joint area. Dr Rahme performed a left total knee replacement in April 2019.

10. Mr Clement was examined by a consultant Occupational Physician, Dr Christopher Oates, on 27 November 2019 for the purpose of assessment of whole person impairment (WPI) arising from injuries to the left knee. Dr Oates assessed Mr Clement as having 20% WPI arising from impairment of the left knee. He deducted one tenth from that figure for the "effects of previous knee injuries and the effects of constitutional conditions affecting the extent of degenerative change".

11. In reliance on Dr Oates report, Mr Clement's solicitors made a claim for lump-sum compensation pursuant to section 66 of the *Workers Compensation Act 1987* (1987 Act). Particulars supplied with the claim placed reliance on frank injuries in 1989 and 1993 as well as the nature and conditions of employment.

12. The insurer had Mr Clement examined for the purpose of consideration of his claim by Dr Richard Powell. Based on Dr Powell's report, the insurer denied liability to pay lump-sum compensation.

13. Mr Clement's solicitors filed an Application to Resolve a Dispute claiming lump sum compensation arising from injuries on 17 November 1989, 17 May 1993 and injury deemed have occurred on 25 March 2019.

14. The respondent maintained its denial of liability but, in conciliation, the parties were able to agree to consent orders on 2 June 2020 which relevantly provided:

> "5. Respondent in the interests of GIO General to pay the applicant section 66 lump-sum compensation on the Table of Disabilities for injury:
>
> a. 17 November 1989 – 2% permanent loss of efficient use of the left leg at or above the knee $1358.25;
>
> b. 17 May 1993 – 2% permanent loss of efficient use of the left leg at or above the knee $1500.
>
> 6. The claim for section 66 of the 1987 Act lump-sum compensation for whole person impairment is remitted to the Registrar for placement on the medical assessment pending list for referral to an approved medical Specialist (AMS) for assessment as follows:
>
> body part – left lower extremity (knee)

date of injury – period of employment from 18 May 1993 25 March 2019 (deemed date of injury 25 March 2019)

7. There are no documents other than those annexed to the Application and Reply before the AMS."

15. On 29 July 2020 the medical dispute was referred for assessment:

"**Date of Injury**:	Period of employment from 18 May 1993 25 March 2019 (deemed date of injury 25 March 2019
Body part/s referred:	Left lower extremity (knee)
Method of assessment:	whole person impairment.
Issues Determined by Arbitrator:	refer Certificate Determination dated 3 June 2020 by Arbitrator Ross Bell."

16. On 2 September 2020 the AMS issued a MAC which assessed 18% WPI in respect of injury to the left lower extremity (knee) resulting from "period of employment from 18 May 1993 to 25 March 2019 (deemed date of injury 25 March 2019)".

17. The AMS assessed the left lower extremity at 20% WPI. He deducted one tenth, 2%, pursuant to section 323 of the 1998 Act to arrive at the assessment of 18% WPI.

PRELIMINARY REVIEW

18. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the WorkCover Medical Assessment Guidelines.

19. As a result of that preliminary review, the Appeal Panel determined that it was not necessary for the worker to undergo a further medical examination because the issue between the parties on the appeal is restricted to the extent of the appropriate deduction pursuant to section 323 of the 1998 Act. Examination of the appellant will not assist determination of that issue.

EVIDENCE

Documentary evidence

20. The Appeal Panel has before it all the documents that were sent to the AMS for the original medical assessment and has taken them into account in making this determination.

Medical Assessment Certificate

21. The parts of the medical certificate given by the AMS that are relevant to the appeal are set out, where relevant, in the body of this decision.

SUBMISSIONS

22. Both parties made written submissions. They are not repeated in full, but have been considered by the Appeal Panel.

23. In summary, the appellant submits that the AMS failed "to undertake the assessment required by the referral of the Commission by erroneously assessing permanent impairment for injury not included in the referral." Further, the appellant submits that the AMS fell into error by applying a deduction from the assessment of impairment of one tenth when that assessment was at odds with the available evidence.

24. In reply, the respondent submits that, although the AMS fell into demonstrable error because his assessment was "contrary to the terms of the referral", the deduction of one tenth pursuant to section 323 of the 1998 Act accorded with the evidence and was appropriate.

FINDINGS AND REASONS

25. The procedures on appeal are contained in section 328 of the 1998 Act. The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made.

26. In *Campbelltown City Council v Vegan*[1] the Court of Appeal held that the Appeal Panel is obliged to give reasons. Where there are disputes of fact it may be necessary to refer to evidence or other material on which findings are based, but the extent to which this is necessary will vary from case to case. Where more than one conclusion is open, it will be necessary to explain why one conclusion is preferred. On the other hand, the reasons need not be extensive or provide a detailed explanation of the criteria applied by the medical professionals in reaching a professional judgement.

27. The appellant's first ground of appeal is understood as an allegation that the AMS failed to recognise that the injury to the left knee on 17 May 1993 was a "previous injury" for the purposes of section 323(1) which should have been considered with respect to any deduction to be made pursuant to section 323.

28. Section 323 of the 1998 Act provides:

> "**323 DEDUCTION FOR PREVIOUS INJURY OR PRE-EXISTING CONDITION OR ABNORMALITY**
>
> (1) In assessing the degree of permanent impairment resulting from an injury, there is to be a deduction for any proportion of the impairment that is due to any previous injury (whether or not it is an injury for which compensation has been paid or is payable under Division 4 of Part 3 of the 1987 Act) or that is due to any pre-existing condition or abnormality.
>
> (2) If the extent of a deduction under this section (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding disputation) that the deduction (or the relevant part of it) is 10% of the impairment, unless this assumption is at odds with the available evidence.
>
> Note: So if the degree of permanent impairment is assessed as 30% and subsection (2) operates to require a 10% reduction in that impairment to be assumed, the degree of permanent impairment is reduced from 30% to 27% (a reduction of 10%).
>
> (3) The reference in subsection (2) to medical evidence is a reference to medical evidence accepted or preferred by the approved medical specialist in connection with the medical assessment of the matter.
>
> (4) The Workers Compensation Guidelines may make provision for or with respect to the determination of the deduction required by this section.
>
> Note : Section 68B of the 1987 Act makes provision for how this section applies for the purpose of calculating workers compensation lump sum benefits for permanent impairment and associated pain and suffering in cases to which section 15, 16, 17 or 22 of the 1987 Act applies."

29. The respondent recognises that this error has occurred. It is clear from the MAC that the AMS did not regard the injury on 17 May 1993 as a "previous injury". He refers to the injury on 17 May 1993 as "the current work-related injury". The terms of the referral clearly recognised that this injury was not to be assessed for the purposes of the claim pursuant to

[1] [2006] NSWCA 284.

section 66 of the 1987 Act other than for the purposes of considering the extent of any deduction pursuant to section 323 of the 1998 Act. Demonstrable error is established.

30. The substantive issue between the parties is the extent of any deduction to be made pursuant to section 323 of the 1998 Act. Error has been established and it is appropriate that the Panel review the evidence in order to decide if the MAC is to be revoked.

31. The brief history in paragraph 4 of the MAC accurately reflects the evidence with regard to the onset of pathology in the left knee. In addition to impairment arising from the work activities performed by the respondent from and after 18 May 1993, there have been three injuries to the left knee. The first is the sport injury in 1979 and the second and third are the work injuries on 17 November 1989 and 17 May 1993.

32. It is common ground that the injuries on 17 November 1989 and 17 May 1993 resulted in permanent loss of use of the left leg, at or above the knee. That is reflected in the consent orders made on 2 June 2020.

33. The AMS assessed the respondent as having 20% WPI in the left lower extremity as result of pathology in the left knee. That assessment was appropriately made in accordance with Table 17-35[2] and Table 17-33 of AMA 5, as the respondent had undergone total left knee replacement. The parties have not identified any error with respect to that assessment and the Panel accepts that the respondent suffers 20% WPI in the left lower extremity as result of pathology in the knee.

34. The respondent submits that a deduction of one tenth is at odds with the available evidence and that in making that deduction the AMS had failed to take into account the extent to which the 17 May 1993 injury contributed to the assessed level of impairment. The respondent submitted:

> "Further, the AMS concedes the degenerative changes in the left knee brought on by the 17 May 1993 injury were significant and ongoing. He said the injury occasioned grade 3 to grade 4 degenerative change in the medial compartment of the knee with resultant debridement and osteoplasty performed. The AMS said that 'although there was some improvement, the knee deteriorated from the point of view of pain and function' (page 5 of the MAC)".

35. The AMS summarised "injuries and diagnoses":

> "Mr Clement injured his left knee at work in an initial incident in November 1989, undergoing a left knee arthroscopy for an operative diagnosis of lateral meniscal tear – (parrot beak). He was able to return to his working duties stating that he was asymptomatic.
>
> On the 17 May 1993, a further work injury to the left knee occurred, resulting in a second arthroscopic intervention, which revealed no macroscopic fresh meniscal tear, either medially or laterally. There was evidence of grade 3 to grade 4 degenerative change in the medial compartment of the knee with resultant debridement and osteoplasty performed.
>
> Although there was some improvement the knee deteriorated from the point of view of pain and function, resulting in a successful total knee replacement by Dr Rahme in March 2019."

36. The respondent noted that Dr Bornstein on arthroscopy had found "marked wear changes in the medial femoral condyle down to bare bone in an area the size of a ten cent piece" and submitted that the deduction pursuant to section 323 should be greater than one tenth.

[2] As corrected by the Guidelines, p 21.

37. The respondent submitted that a one tenth deduction was appropriate where the extent of any impairment arising from previous injuries have been relatively minor given that the respondent had been able to perform heavy and repetitive duties for more than 25 years. The respondent noted the nature of the heavy duties performed by Mr Clement and the manner in which they were performed. The respondent submitted that the Mr Clement's history of complaints suggested a slow and steady development of the left knee pathology.

38. The respondent further submitted that the total knee replacement had resulted from the work activities performed by the respondent, the previous injuries having occurred in the distant past.

39. The respondent submitted:

> "Furthermore in the absence of any radiological or other medical investigations in the intervening years, it is impossible for any apportionment to be applied with precision. Instead it is submitted that the respondent worker progressed over some 26 years from the point where immediately subsequent to injury on 17 May 1993 and subsequent arthroscopic procedure his knee remained functional albeit with some symptomatology to the point where some 26 years later following the imposition of daily repetitive stresses and strains upon his knee joint in the course of his employment, he underwent knee replacement."

40. The Panel agrees with the submission of the respondent worker that "it is impossible for any apportionment to be applied with precision." The Panel however does not accept that the difficulty prevents assessment of an appropriate proportion to be deducted pursuant to section 323.

41. Section 323 (2) allows deduction of 10% in respect of previous injury or injuries, pre-existing condition or abnormality where the extent of the deduction is difficult or costly to determine, unless this assumption is at odds with the available evidence.

42. There is no dispute that the respondent had suffered previous injuries to his left knee. The first of these was in 1979 when he sustained a medial collateral injury. This injury was treated conservatively and it appears that the respondent made a full recovery. Any contribution to the overall level of impairment found on examination by the AMS would be relatively insignificant.

43. On 17 November 1989 Mr Clement suffered a further injury to the left knee which was treated by Dr Bornstein. (This injury is referred to as having occurred in 1990 in some later reports). Dr Bornstein performed an arthroscopy on 27 November 1989 at which he found "a parrot beak tear of the lateral meniscus plus blood in the joint". Dr Bornstein reported "that parrot beak tear was excised leaving the majority of meniscus intact. He has at least 90% of his meniscus left behind; the rest of it looked reasonably good."

44. The respondent stated that he made a good recovery and return to his pre-accident duties. He injured the left knee again on 17 May 1993 and was again referred to Dr Bornstein. Dr Bornstein noted that the knee was "very swollen." An arthrogram showed a bucket handle tear of the lateral meniscus. Dr Bornstein reported:

> "The split in the meniscus is very clearly visible on the available films. Under the circumstances he has re-injured the lateral meniscus, a not unusual situation, as 90% of meniscus was left behind at the time of his previous surgery, the parrot beak only being removed as is normal practice."

45. Dr Bornstein performed a further arthroscopy on 25 June 1993. He reported:

> "At arthroscopy he was found to have marked wear changes on the medial femoral condyle down to bone covering the area of a ten cent piece. The lateral meniscus was examined arthroscopically and found to be normal. The medial meniscus as [sic - was]

found to be normal. There was a lot of wear debris through the joint which was washed out and sucked out and osteoplasty was performed of the medial femoral condyle."

46. Mr Clement returned to his pre-injury duties but felt that the left knee gradually deteriorated. He said he had problems squatting and "could not really work or even walk without pain and restriction."

47. Mr Clement reported that symptoms worsened in 2017, at which stage he again sought treatment and was referred to a different orthopaedic surgeon, Dr Rahme. Dr Rahme examined the respondent in January 2018. He noted a history of "long-standing left knee issues." He reported to the general practitioner: "Peter has a correctable varus deformity and a positive medial grind test. The standing x-ray demonstrated medial compartment bone on bone osteoarthritis. There are degenerative changes involving the lateral compartment on x-ray but minimal lateral pain". Dr Rahme requested an MRI scan of the left knee.

48. An MRI scan of the left knee was performed and the findings are reported:

> "There is a diminutive medial meniscus. This could be due to prior meniscectomy or a large degenerative tear. There is a large horizontal tear in the anterior horn of the lateral meniscus. There is intrasubstance myxoid change. There is also a small radial tear in its body.
>
> There is a moderate effusion and a tiny Baker's cyst. There is grade 4 chondromalacia in the posterior half of the medial compartment with mild patchy sub chondral oedema. There is grade 2 chondromalacia in the posterior portion of the lateral tibial plateau. Cartilage in the rest of the lateral compartment is preserved. There is irregular grade 2 chondromalacia of the patella centrally. There is moderate irregular grade 2 – 3 chondromalacia in the trochlea.
>
> The ACL is deficient consistent with chronic rupture. There is anterior subluxation of the tibia. There is diffuse thickening of the PCL. The collateral ligaments are intact.
>
> The extensor mechanism and ITB are intact. There is mild popliteus tendinosis."

49. The radiologist commented: "Diminutive medial meniscus. There is a large horizontal tear in the anterior horn of the lateral meniscus as well as a small radial tear in its body. There is significant medial compartment OA. There is mild lateral and PF compartment OA . Deficient ACL."

50. In the light of the findings Dr Rahme recommended a total knee replacement. This was performed on 25 March 2019. Following the arthroplasty, Dr Rahme reported to the general practitioner noting excellent progress with regard to the range of motion and function. He felt that persistent swelling would improve. Dr Rahme reported:

> "Peter was able to find relevant history with regard to the left knee with two arthroscopies required due to work injuries, one in 1990 and one in 1993. These entailed partial or subtotal medial meniscectomy. The initial injuries to Peter's knees have been the primary predisposing factor to the development of secondary osteoarthritis. More recent injuries have exacerbated those changes."

51. Dr Christopher Oates, occupational physician, examined the respondent on 27 November 2019 at the request of the respondent's solicitors. He obtained a history similar to that set out above and consistent with the history in the MAC. With respect to the injury on 17 May 1993 Dr Oates reported:

> "This was a contributing factor to the condition, but he had already had a torn medial meniscus in 1990 at work, which would also have contributed. I assume these two injuries could be deemed 'substantial contributing factors' because they resulted in surgery, hence could not be considered minor or inconsequential.

> These two incidents, which resulted in partial medial meniscectomy would have initiated a gradual development of post-traumatic degenerative change in the medial compartment but each incident would represent a contributing factor to the knee condition."

52. Dr Oates noted that the work duties including regularly jumping up and down from a riding step on the back of the garbage truck would have represented a material aggravating factor to the pathology in the left knee.

53. Dr Oates noted the knee replacement surgery and assessed 20% WPI. He said "A one tenth deduction is appropriate for the effects of previous knee injuries and the effects of constitutional conditions affecting the extent of degenerative change, as I note the finding of chondrocalcinosis in the knee at the time of the MRI scan."

54. The injury to the left knee referred for assessment is that which is deemed to have occurred as a result of the nature and conditions of employment between 18 May 1993 and 25 March 2019. Mr Clement on examination by the AMS was found to have 20% WPI as result of injury to the left lower extremity (knee).

55. The parties do not dispute that a proportion of that impairment is due to previous injuries suffered by the respondent. Previous injuries are identified as the sporting injury in 1979 and the workplace injuries in 1989 and 1993.

56. The Panel accepts that a deduction of one tenth in respect of those injuries would be at odds with the available evidence. The sporting injury in 1979 does not appear to be of a nature that could be said to contribute to the impairment assessed. The injury was treated conservatively and the respondent states that he made a complete recovery after a few weeks.

57. The two subsequent work injuries did result in surgical investigation by way of arthroscapy. The reports of Dr Bornstein establish the extent of those procedures.

58. The MRI scan in January 2018 notes the "diminutive medial meniscus" which results from the procedures performed by Dr Bornstein following the workplace injuries. Those injuries are agreed by the parties to have resulted in loss of efficient use of the left leg at or above the knee.

59. The arthroscopy in June 1993 disclosed marked wear changes on the medial femoral condyle down to bone. Dr Bornstein reported "a lot of wear debris through the joint" and noted that an osteoplasty of the medial femoral condyle was performed.

60. The Panel notes that Dr Rahme reported that he felt the earlier injuries were "the primary predisposing factor" to the development of secondary osteoarthritis. The Panel, having reviewed the evidence, is satisfied that the consequences of the earlier work injuries did more than "predispose" the respondent to the development of secondary osteoarthritis. The result of those injuries was to create a level of impairment in the left knee which directly contributed to the development of the pathology which resulted from the performance of arduous work tasks operating on the impaired joint.

61. Dr Oates noted that with respect to "the additional injury in 1990" (which the Panel assumes is a reference to the workplace injury in 1989): "This knee injury was significant enough to require an arthroscopic partial meniscectomy. Partial loss of meniscal cartilage does result in an accelerated rate of post-traumatic degenerative change in developing in the knee."[3] Dr Oates commented with respect to apportionment that he considered a one tenth deduction appropriate. He explained:

[3] Report 2 December 2019 – p 50 Application to Resolve a Dispute.

> "Because Mr Clement had a good result following both previous partial meniscectomies an injury of the fact that partial meniscectomy does contribute to the formation of degenerative change in the knee joint resulting in the eventual need for TKR, I deducted the standard one tenth from the total assessable whole person impairment."

62. The Panel notes that a one tenth deduction is only to be applied where the extent of the deduction is difficult or costly to determine and is not at odds with the available evidence. The Panel does not feel that Dr Oates has considered whether a one tenth deduction is at odds with the evidence, describing it as "standard".

63. Dr Richard Powell who examined the respondent at the request of the insurer reported:

> "The meniscus is an important stabilising and shock absorbing component in the knee and following sequential partial meniscectomy is the biomechanics of the joint are likely to have been altered. This in turn predisposes to the presence of degenerative change. Mr Clement continued to perform physically demanding work and is reasonable to conclude that the combination of these factors has contributed to the subsequent development of the post-traumatic osteoarthritis necessitating total knee replacement."

64. Dr Powell noted the employment history. He said:

> "I believe it is reasonable to conclude that there has been contribution to the nature and conditions of his employment to the development of left knee osteoarthritis. This is based on the form of development and aggravation of the degenerative disease process worker is reasonable to conclude that his employment does represent the main contributing factor in the development an aggravation of the degenerative disease process involving the left knee. The arthritic condition is multifactorial and I do not believe it can be solely attributed to injury sustained in 1990 and 1993."

65. Dr Powell assessed impairment in the left knee pursuant to the Table of Disabilities and by way of WPI. He attributed the impairment equally to the incident which he believed occurred in 1990, the incident in 1993 and the "nature and conditions" (by which he meant the entire period of the respondent's employment with the appellant and its predecessor).

66. The Panel accepts that it is difficult to apportion the contribution of the injuries in 1989 and 1993 to the overall level of impairment. However, in the view of the Panel, having reviewed the reports of Dr Bornstein, Dr Rahme and Dr Powell and the findings on radiological investigation, it is apparent that a deduction of one tenth is at odds with the evidence.

67. The Panel accepts that Mr Clement was able to perform arduous work from 1993 to 2017 without seeking medical attention and that history suggests a contribution less than the two thirds suggested by Dr Powell. The symptoms which led ultimately to the left total knee replacement built up over more than 24 years and this indicates that the contribution of the earlier work injuries were substantially less than the contribution of the work tasks.

68. That contribution, on the history provided, would appear to be at least 20% but not more than 30%. The whole of the evidence and the history of continuous heavy duties at least until 2013 when the respondent took on a more senior role, indicate that would be reasonable to assess the proportion at one quarter.

Conclusion

69. The Panel is satisfied that error has been established and that the AMS has not identified the injury on 17 May 1993 as a previous injury as indicated by the terms of the referral. No error has been suggested in respect of assessment of the overall level of impairment at 20% WPI. The Panel on review of the evidence is satisfied that the appropriate deduction to be made pursuant to section 323 of the 1998 Act is one quarter. That assessment is difficult to make but an assessment of one tenth is at odds with the evidence when the injury on 17 June 1993 is appropriately viewed as a "previous injury".

70. The Panel finds on review that the respondent has 20% WPI in respect of the left lower extremity (knee). One quarter of that assessment is due to previous injuries and the Panel finds that the respondent has 15% WPI as the result of injury deemed have occurred as a result of the nature and conditions of employment between 18 May 1993 and 25 March 2019.

71. For these reasons, the Appeal Panel has determined that the MAC issued on 2 September 2020 should be revoked, and a new MAC should be issued. The new certificate is attached to this statement of reasons.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE REASONS FOR DECISION OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998*.

G De Paz

Glicerio De Paz
Dispute Services Officer
As delegate of the Registrar

WORKERS COMPENSATION COMMISSION

APPEAL PANEL
MEDICAL ASSESSMENT CERTIFICATE

Injuries received after 1 January 2002

Matter Number: **2398/20**
Applicant: **Inner West Council**
Respondent: **Peter James Clement**

This Certificate is issued pursuant to s 328(5) of the *Workplace Injury Management and Workers Compensation Act* 1998.

The Appeal Panel revokes the Medical Assessment Certificate of Dr Ian Meakin and issues this new Medical Assessment Certificate as to the matters set out in the Table below:

Table - Whole Person Impairment (WPI)

Body Part or system	**Date of Injury**	**Chapter, page and paragraph number in WorkCover Guides**	**Chapter, page, paragraph, figure and table numbers in AMA 5 Guides**	**% WPI**	**Proportion of permanent impairment due to pre-existing injury, abnormality or condition**	**Sub-total/s % WPI (after any deductions in column 6)**
1. Left lower extremity (knee)	25/03/2019	Chapter 3 pp 16-25	Table 17.35 (corrected) Table 17.33	20%	1/4	15%
Total % WPI (the Combined Table values of all sub-totals)					**15%**	

Mr William Dalley
Arbitrator

Dr John Ashwell
Approved Medical Specialist

Dr Brian Stephenson
Approved Medical Specialist

23 December 2020

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE MEDICAL ASSESSMENT CERTIFICATE OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998*.

G De Paz

Glicerio De Paz
Dispute Services Officer
As delegate of the Registrar