

1. Does the leave requirement apply?

- a. Did the injury arise out of employment? – [SIM 3.2.1](#)¹
- b. Did the injury arise in the course of employment? – [SIM 3.2.2](#)
- c. Was the injury a disease or gradual process injury due to the nature of employment? – [SIM 3.2.3](#)
- d. Was the injury the result of a transport accident? – [SIM 3.3](#)

2. Injuries to multiple body parts – [SIM 4.1.2.1](#), [SIM 4.3.4](#)

- a. Focus is on identifying the impairment – What function(s) have been lost by the injury? – *Humphries v Poljak* [1992] 2 VR 129; *Grech v Orica Australia Pty Ltd* (2006) 14 VR 602
- b. Each impairment must be assessed separately – *Humphries v Poljak* [1992] 2 VR 129 – but injury to multiple body parts might produce single impairment – *Georgopoulos v Silafortis Painting Pty Ltd* (2012) 37 VR 232
- c. Multi-level spinal injuries produce single impairment – *TAC v Zepic* [2013] VSCA 232
- d. Bilateral impairments may be single impairment or may be separate impairments – *Grech v Orica Australia Pty Ltd* (2006) 14 VR 602; *Target Australia Pty Ltd v Moloney* [2000] VSCA 124

3. Aggravation of pre-existing injuries – [SIM 4.1.2.2](#), [SIM 4.3.4](#)

- a. Generally must be assessed separately – Assess whether aggravation is serious, not just whether final impairment is serious – *Petkovski v Galletti* [1994] 1 VR 436
- b. Query whether series of non-serious injuries can produce a serious injury – *Spence v Gomez* [2006] VSCA 48
- c. Permissible to treat repetitive minor injuries as a single injury – *Grech v Orica Australia Pty Ltd* (2006) 14 VR 602; [2006] VSCA 172; *O'Neill v TD Williamson Aust Pty Ltd* [2008] VSC 398,

4. Duration of injury – Must be permanent / long term – [SIM 4.2](#)

5. Serious injury – [SIM 4.3](#)

- a. Narrative test – *Humphries v Poljak* [1992] 2 VR 129; *Barwon Spinners v Podolak* (2005) 14 VR 622
- b. Test applies to the consequences of the injury in terms of pain and suffering or loss of earning – *Barwon Spinners v Podolak* (2005) 14 VR 622,

¹ Serious Injury Manual (“SIM”)

6. Severe psychological injury – [SIM 4.3](#)

- a. More significant than ‘serious’ – *Mobilio v Balliotis* [1998] 3 VR 833.
- b. Requirement to consider full range of factors relevant to assessment and full range of possible injuries, and not limited to extent of treatment – *TAC v Katanas* [2017] HCA 32

7. Disentangling physical and mental injuries – Relevant to workplace injuries, not transport injuries – [SIM 4.3.3](#)

- a. Only necessary if judge finds there is no substantial organic basis for condition – *VWA v Nguyen* [2016] VSCA 284
- b. Primarily arises in relation to removing pain caused by functional overlay from physical assessment – *Mutual Cleaning and Maintenance Pty Ltd v Stamboulakis* (2007) 15 VR 649

8. Measuring pain and suffering consequences – [SIM 4.3.1](#)

- a. Separately identify plaintiff’s experience of pain and disabling effect of pain and then consider combined effect– *Haden Engineering Pty Ltd v McKinnon* (2010) 31 VR 1; *Sutton v Laminex Group Pty Ltd* (2011) 31 VR 100
- b. Consider *Haden Engineering Pty Ltd v McKinnon* (2010) 31 VR 1 list of pain consequences
- c. Loss of ability to undertake work relevant to assessing pain and suffering consequences – *Haden Engineering Pty Ltd v McKinnon* (2010) 31 VR 1
- d. Consider significance of loss to the individual plaintiff – *Ellis Management Services Pty Ltd v Taylor* [2013] VSCA 326

9. Loss of earning capacity – [SIM 4.3.2](#)

- a. Additional requirement of 40% loss, separate to narrative serious injury test, in workplace injury cases
- b. Assessment of earning capacity in suitable employment – [SIM 4.3.2](#)

10. Implied admissions by employer or insurer approving statutory compensation – [SIM 6.2](#)

– *Ansett Australia Ltd v Taylor* [2006] VSCA 171; *Fokas v Staff Australia Pty Ltd* [2013] VSCA 230; *Sednaoui v Armac Corrosion Protection Pty Ltd* [2017] VSCA 66; *Ifka v Shahin Enterprises Pty Ltd* [2014] VSCA 8