

***Transport Accident Commission v Haimour* [2020] NSWSC 868 (8 July 2020) – New South Wales Supreme Court**

‘Administrative law’ – ‘Judicial review’ – ‘Legal error’ – ‘Motor Accidents Compensation (MAC) ACT 1999’ – ‘People affected by trauma’ – ‘Permanent impairment guidelines for pre-existing or subsequent condition’

Proceedings: Judicial review of the Medical Assessment Review Panel assessment that the female first defendant’s whole person impairment (WPI) for psychiatric and/or psychological injury sustained in a motor vehicle accident was 21%.

Facts: The plaintiff argued that the assessment of the first defendant’s pre-existing and/or subsequent impairment for injuries unrelated to the motor vehicle accident was flawed because the domestic violence she was exposed to before and after the accident contributed significantly to the exacerbation of her symptomology. Based on collateral materials, the Review Panel found the first defendant was ‘subjected to a pattern of both physical and emotional abuse in a dysfunctional marriage which both pre-dated and post-dated the accident’. The first defendant ‘maintain[ed] that she was not the victim of any domestic violence before or after the accident’.

The Review Panel did not determine what percentage of the WPI was attributable to the motor vehicle accident and what percentage to domestic violence.

Decision and reasoning: *Medical Assessment Review Panel decision set aside. Matter to be returned to the Review Panel.* There was an error of law in:

the Panel’s failure to undertake for themselves an assessment of the degree to which one episode of trauma versus an unrelated episode of trauma or, in this case episodic trauma, contributed to the first defendant’s WPI for the purposes of the MAC Act.