City lawyer Christopher Serow's landmark case against Commonwealth employers

By LYDIA ROBERTS – THE ARMIDALE EXPRESS
25 May 2016, 3:30 a.m.

AN ARMIDALE law firm and a pilot client have made legal history in a High Court ruling.

The decision has provided clarification in relation to compensation claims previously rejected by the Commonwealth and the evidentiary requirements to prove if an injury was caused in the course of employment.

JUSTICE IS SERVED: Legal Minds Principal Solicitor Christopher Serow and pilot Benjamin May in Armidale on Friday. Mr May takes 11 tablets daily for vertigo.

Commonwealth employers, particularly the federal government and Department of Defence, have insisted that workers accompany their claims with a diagnosis, pathology results and specialist medical evidence; or that workers prove the injury happened "suddenly" in the course of or out of the workplace.

In the case of Benjamin May v MRCC, however, the full court of the Federal Court agreed such requirements might not always be required.

But that judgment was appealed by the Military Rehabilitation and Compensation Commission.

That's when Legal Minds Principal Solicitor Christopher Serow was approached to take up the case on behalf of Mr May and instruct Richard McHugh SC and Bridie Nolan of Counsel in the High Court in March.

For Mr May, it completed a six-year battle for justice. He joined the RAAF in 1998 to train as a fighter pilot.

Shortly after joining the RAAF, Mr May suffered an injury.

Ultimately, he was forced to leave the RAAF in 2004, blaming adverse reactions to vaccinations he received in the course of his employment resulting in him suffering fatigue, illness and dizziness.

Mr May continues to take 11 tablets daily to treat chronic vertigo.

While the High Court judges agreed Mr May's health had deteriorated causing early termination of his military career, they did not agree the evidence supported his injury was caused during or out of his employment or that he was eligible for compensation.

"The High Court clarified what the law is and how the definition of 'injury' and 'injury (other than a disease)' is to be interpreted," Mr May said.

"This means claims that had failed in the past may now be upheld in the future and that some claims refused in recent years may now have a right to appeal."

Mr Serow said the decision by the High Court had settled uncertainty as to the proper construction of the phrase "injury (other than a disease)" and the definition of "injury" as was defined in the Safety, Rehabilitation and Compensation Act 1988 and evidentiary requirements.

"The High Court made it clear that establishing that a person has suffered an injury is not limited to a "sudden" physiological change.

Suddenness is not the essential criteria that must apply," Mr Serow said.

The determination is of significant importance in relation to any past claims that may seek to appeal the narrow interpretation that has often been applied in cases seeking compensation for workplace injuries caused in Commonwealth employment. Some of those claims were for diseases and injuries (other than disease) such as mental disorders, respiratory and circulatory disorders and cancers.