

AUSTRALIAN GOVERNMENT IN-HOUSE COUNSEL WEBINAR SERIES 2022

Professional Development and Networking for
the In-House Legal Community

Session 5 - Responding to Comcare claims: what is expected of you and your staff?

Presented by Andrew Allan, Partner

Monday, 7 March 2022

Acknowledgement of Country

In the spirit of reconciliation, HWL Ebsworth Lawyers acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community.

We pay our respect to their Elders past and present, and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

Agenda

1. The Comcare scheme
2. Claim process
3. Providing information and documents to Comcare
4. Case studies
5. Issues to consider (and discuss)

The Comcare scheme

- *Safety, Rehabilitation and Compensation Act 1988*
- No-fault scheme
- Compensation for:
 - Injuries that arise out of, or in the course of, employment
 - Diseases that are significantly contributed to by employment
 - Exclusion for diseases that are a result of reasonable administrative action taken in a reasonable manner in respect of employment

The Comcare scheme

- Compensation covers:
 - Incapacity for work
 - Medical expenses
 - Rehabilitation
 - Permanent impairment
- Employer (not Comcare) is responsible for rehabilitation

Claim process

- Employees will take the following steps:
 - Report the injury to supervisor/work system
 - Submit claim form, along with medical certificate, which covers:
 - Diagnosis
 - Cause of condition
 - Date of injury
 - Fitness for work
 - Recommended treatment
 - Employer must then provide relevant information, including when first notified. Option to provide statement or additional information.

When might further information be required?

- If an issue about 'arising out of, or in the course of employment'
 - Sporting teams
 - Work-related travel
 - Building entry
- If an issue about significant contribution:
 - Ergonomic design/set-up
 - Psychological conditions

What is required of a manager?

- Know about incident reporting requirements
 - Incident reports invariably make their way to Comcare
 - May be weeks or years between when the report is completed and when the claim is determined
 - Clear and comprehensive
- Complete your portion of the claim form (mostly on-line):
 - When was claim received
 - When was employer first notified
 - Classification and job history
 - Time off work
 - RTW plan (if any)

Employer responses and witness statements

- In more complex cases
- Comcare has power under section 71 of the SRC Act to make a request:
 - By notice in writing;
 - Documents and information:
 - In the possession, custody or control;
 - Relevant to a claim made by, or in relation to, an employee;
 - Relate to the performance or functions or exercise of powers;
 - Comply without delay.
- But a witness statement might also assist

Case studies

- A simple strain
- A psychological injury
 - Documents
 - Statements
 - Importance of contemporaneous notes

Hearings in the Administrative Appeals Tribunal

- A more comprehensive request for information and documents
- Statements from witnesses/colleagues
- Giving evidence at a hearing

Issues to consider

- Can staff be compelled to provide witness statements?
- Can staff be compelled to give evidence at a hearing?
- Are Comcare claims confidential?
- Are Tribunal hearings and decisions confidential?
- Risk mitigation:
 - Records
 - Information
 - Communication

Questions?

Team Contact



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