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## LawTalk Blog



# Comcare workers compensation claims for psychological injuries – a recent development in the Federal Court

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When a worker suffers an injury in the workplace and requires time away from work and/or medical treatment, that worker should pursue a workers compensation claim.

Most workers in South Australia are covered by the '[Return to Work](#)' scheme which has been in place since mid-2015. Return to Work is a South Australian state based [workers compensation](#) scheme.

## What is Comcare?

However a relatively significant percentage of other workers from some large employers are covered by a different scheme called [Comcare](#). This is a Federal [workers compensation](#) scheme.

People covered by the Comcare scheme include Commonwealth public servants and Commonwealth agencies (for example, those employed by the Australian Taxation Office or Centrelink) as well as larger employers (often operating across state boundaries) including some big banks like the CBA or large transportation companies.

## How does the Comcare workers compensation system work?

Under Comcare, workers are able to pursue claims for both physical and psychological injuries, and disputes regarding the rejection of claims or related entitlements will go through the federal Administrative Appeals Tribunal.

For the better part of a decade, pursuing psychological claims has been notoriously difficult in the Comcare system. This is because of the employer's reliance of the defence of 'reasonable administrative action'.

## What's the result when the employer uses the defence "reasonable administrative action"?

Many workers experience bullying, harassment or unreasonable work pressures and other unfair conduct during the course of their employment, and this can lead to mental injury including anxiety, depression and even Post Traumatic Stress Disorder. But employers have been able to avoid liability by arguing that their injury has been wholly or partially caused by reasonable administrative action.

Alleged bullying at work; Let us assume that a worker's psychological injury has been caused by 4 different reasons:

1. Being provided with unreasonably high targets and KPIs;
2. Unreasonable performance management, for example, being overly critical and implementing an unfair performance plan;
3. Failure to obtain a promotion.

All the doctors and psychiatrists assert that each of these factors has equally contributed to a worker's serious mental health deterioration.

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A worker might even prove that all of her allegations indeed occurred; for example, proof exists that she was bullied and harassed at work. The employer in this instance can still escape liability to make any workers compensation payments by arguing that one of the causes of the injury was due to reasonable, namely it was reasonable to not award a promotion to this particular worker.

Even if it is proven that 75% of the psychological injury was caused from unreasonable action and conduct by the employer, the claim fails completely because part of the injury was caused by reasonable action.

This is why psychological injury claims have been so difficult to prove; because it is quite easy for an employer to assert that one of the reasons causing the development of the worker's injury was reasonable administrative action. The High Court of Australia reached this very conclusion in the *Hart* case.

But after a decade of struggle against this unfair law, the tide may be turning.

## There is hope on the horizon for Comcare psychological injury claims

In April 2017 the Full Bench of the Federal Court arguably overturned the justification in the *Hart* case and found that the worker was entitled to be compensated for an injury she sustained in 2011.

In this latest case of *Lim*, the Federal Court found that employers could no longer rely on the reasonable administrative action of one of the causes of the injury to deny the entire claim. It seems the question now to be asked is: would the worker have still suffered the psychological injury if the 'reasonable administrative action' factor is removed?

### *"If you are confused, you are not alone"*

If you are confused, you are not alone. The Comcare scheme is a minefield of complexity. The applicant in this case, Ms Lim is not entirely assured of victory yet – a Federal Court decision can be appealed to the High Court. But it is a very promising sign for injured workers in the Comcare system.

In addition, the case might open the door for workers to now dispute the rejection of their claims going back years. Previous rejections based on the *Hart* principle may now be eligible for review.

The Comcare system is very tricky and pursuing matters through the Administrative Appeals Tribunal is fraught with difficulty.

As we see by the above *Lim* case, the law is constantly evolving with new litigation being disputed all the time. If you are injured physically **or** psychologically, or suffer a disease caused by your employment, you should seek advice as soon as possible from a lawyer experienced in workers compensation law.

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