

Article Information

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Worried about workers' compensation claims? High Court confirms directions to employees must be reasonable

The High Court has clarified the administrative action exclusion under the Commonwealth's workers' compensation laws.

In [Comcare v Martin \[2016\] HCA 43](#), the Court unanimously held that the approach to whether an employer or insurer can utilise the exclusion and protect itself from a workers' compensation claim is to be based on causation. Under the Safety, Rehabilitation and Compensation Act 1988 (Cth) (Act), it is now clear that the sole question to ask is whether the employee's injury or aggravation would have occurred had the reasonable administrative action not been undertaken.

Background

The case arose when a media reporter suffered an aggravation of a mental condition in her reaction to her failure to obtain a promotion. The reporter had been acting in a cross media role, and the position was advertised for permanent appointment a year later. The reporter applied for the position but was unsuccessful and was slated to return to her old role under a supervisor she had previously alleged had bullied and harassed her. When notified that she had been unsuccessful she "broke down uncontrollably" and immediately went home, seeking medical treatment the next day.

It was not in dispute whether the reporter had suffered a disease which was capable of being regarded as an injury under definition contained in sections 5A and 5B of the Act. Therefore, the reporter was entitled to claim under the Act's workers' compensation provisions unless an exclusion applied. Section 5A of the Act provided for an exclusion of liability if the disease was suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.

Comcare refused her claim for compensation for her diagnosed suffering of adjustment disorder as it contended that the media reporter's adjustment disorder was a result of the decision not to appoint her to the alternative role.

AAT and Federal Court

The Administrative Appeals Tribunal at first instance accepted the reporter's claim. It was satisfied that one of the operative causes of the reporter's adjustment disorder was the failure to obtain a promotion in the sense it meant returning to her former supervisor, and not out of any lack of career advancement. The Tribunal held that the former supervisor's involvement in selection for the alternative role resulted in the process not having been undertaken in a reasonable manner. For that reason the exclusion in s 5A of the Act did not apply.

On appeal to the Federal Court, Comcare limited its case to challenging the Tribunal's decision that the decision not to appoint the reporter to the alternative role was not taken in a reasonable manner. Griffiths J focused on the action of informing the reporter that she was unsuccessful in her application for the cross media reporter role (which was said to have triggered the injury). His Honour agreed with Comcare's contention that the action was a reasonable administrative action and allowed the appeal.

On further appeal to the Full Court of the Federal Court by the media reporter, Siopis and Murphy JJ agreed with the reporter and upheld the appeal.

The majority characterised section 5A as requiring a "common sense" approach to causation. The majority held that there was likely an intervening administrative action to place the media reporter back in her original role, and by misconstruing

the expression “suffered as a result of”, the Tribunal had treated the informing of the media reporter that she was unsuccessful in her application as causative. The majority held that this was no more than a chronological precedent to the event which was the cause of the adjustment disorder which was actually sending the reporter back to her original position.

High Court

In contrast to the Full Court, the critical finding of the Tribunal according the High Court, was that in the reporter’s mind, she perceived that returning to her former role was a direct and foreseeable consequence of the decision not to appoint her to the alternative role. It also found that the deterioration of her mental condition with the aggravation of her adjustment disorder was triggered by the potential results of the decision not to appoint her to the alternative role.

The High Court held that the phrase in section 5A, “as a result of” is to be naturally read, and not to have imposed on it its own free-standing test. Consequently, a natural reading of the phrase led to the need to consider the causative test in section 5B. Even if there are multiple causes of the employee’s condition, what is required to uphold the exclusion of reasonable administrative action is to ask, **but for anything else, did the taking of an administrative action cause the employee’s ailment or aggravation to be capable of being a disease?** The driving principle in applying that test is to utilise the purpose of the exclusion. That purpose is to allow human resource departments to undertake a wide range of legitimate actions, that (when taken in a reasonable manner) would not attract the workers’ compensation laws.

The High Court finalised its judgment by holding that the nature of the perceived consequence, whether personal, professional, real or imagined “is beside the point”.

In any dispute, a Court will look to the purpose of the Act, which as the High Court noted, is to allow legitimate human resource decisions to be undertaken and directed to employees in a reasonable manner.

Ultimately, the High Court restored the orders of Griffiths J at first instance which remitted the matter back to the Tribunal to be heard according to the High Court’s elaboration of the law above.

Lessons for Employers

This case demonstrates that when providing a direction to an employee or exercising an action, employers must ensure that their actions are reasonable in all cases. Failure to direct an employee in a reasonable way (even if your policies allow for directions in a particular way) may allow employees to claim compensation under workers’ compensation laws.

This case does not broaden the reasonable direction exclusion but merely tidies up the interpretation of the causative issues. Employers may still be liable for workers’ compensation for employee’s medical illnesses arising or being aggravated for any other reason which is not a reasonable direction.