

## *Australian Postal Corporation v Sinnaiah* [2013] FCAFC 98

### Key Points

- Section 37(7) of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (“SRC Act”)
- Suspension following non-compliance with rehabilitation is only limited to the injury that is the subject of that rehabilitation.

### Background

Indrani Sinnaiah was an employee of the Australian Postal Corporation (**Australia Post**). Ms Sinnaiah had accepted claims for injuries to her lower back and right shoulder.

On 9 July 2012 a rehabilitation authority determined that Ms Sinnaiah should undertake a rehabilitation program in respect of her right shoulder injury.

Ms Sinnaiah failed to undertake the program and on 2 August 2012, Australia Post determined that her entitlement to compensation was suspended pursuant to section 37(7) until such time as she commenced the program. Ms Sinnaiah sought reconsideration of the decision on 6 August 2012. In a reviewable decision dated 11 September 2012, the reconsideration officer affirmed the determination and decided that Ms Sinnaiah should commence rehabilitation in accordance with the program.

Australia Post contended that the effect of a suspension pursuant to section 37(7) of the SRC Act was to suspend Ms Sinnaiah’s rights to compensation in relation to all her accepted injuries rather than just her rights relating to the right shoulder injury. Ms Sinnaiah argued that the suspension could only be in respect of the rights flowing from the right shoulder injury.

Comcare was joined as a party to the proceedings pursuant to section 108C(8)(b) of the SRC Act, and made submissions in support of Australia Post’s position.

### The Law

In the first instance, on the issue of whether section 37(7) operates to suspend the employees’ rights in relation to all injuries if they do not comply with a rehabilitation program, the Tribunal cited the High Court’s Decision in *Canute v Comcare* (2006) 226 CLR 535 and emphasised “*the pivotal importance*” of the concept of injury in the SRC Act and held that compensation under the SRC Act is “*unavoidably and unseverably tied to an injury*”.

Australia Post appealed to the Federal Court and sought to have the decision set aside on the basis that the Tribunal had made an error of law in ‘*seeking to read down the scope and operation*’ of s 37(7)”.

The argument in the Federal Court was substantially the same as the argument before the Tribunal. Australia Post and Comcare submitted that section 37(7) required the suspension of all rights: past, present and future.

The Court relied on *Buck v Comcare* (1996) 66 FCR 359 (“*Buck*”), where Finn J dealt with the equivalent provision in section 57(2) of the SRC, which allows for suspension following non-attendance at a medical appointment. In *Buck*, Comcare argued that the existence of a reasonable excuse was not a matter of objective fact so that its presence or absence was not reviewable but was a matter entirely for Comcare’s subjective opinion. His Honour said (at 364):

*... [Section] 57(2) operates on a significant, albeit statutory, right of an employee ... it is a right of sufficient significance to the individual in my view, that, where there may be doubt as to Parliament’s intention, the Courts should favour an interpretation which safeguards the individual.*

Comcare submitted that the interpretation of section 37(7) of the SRC Act that was being asserted would provide an incentive to an employee to undertake rehabilitation and, with s 36(4), s 37(7) was the only available sanction to enforce compliance with the rehabilitation requirements. However the Court noted that this submission did not consider the fact that there are sanctions already in place under the Tribunal’s interpretation of section 37(7). That is, a failure without reasonable excuse to undertake a rehabilitation program results in the suspension of the right to compensation for: incapacity for work (s 19); permanent impairment compensation (s 24); non-economic loss (s 27); and household and attendant care services (s 29), no matter how acute or extensive the need.

## Conclusion

The Court noted that:

*“[t]he construction urged upon the Tribunal by Australia Post and supported in this court by Comcare would have a draconian effect. Senior counsel for Australia Post fairly characterised it as using a sledgehammer to crack a nut. It would extend the reach of the suspension to rights in relation to injuries that have no relationship to the determination giving rise to the suspension including rights that have been recognised by previous decisions of the Tribunal or this Court ... And it makes no sense to read the subsection in this way.”*

The court therefore ordered that the application be dismissed.

## Lessons Learnt

This case makes it clear that if an employee has not complied with a rehabilitation program for one injury, this does not affect their rights to compensation in relation to other accepted injuries that are unrelated.

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