

Comcare v Lofts [2013] FCA 1197 (18 November 2013)

Key Issues

- In some cases, the Tribunal may have the power to consider claims for medical expenses pursuant to section 16 when reviewing a decision in respect of section 14 liability
- In this case, the Federal Court found that the Tribunal did not have jurisdiction to determine Ms Lofts' claim for compensation under section 16, as that claim was not before the decision maker at the time of making the reviewable decision

Background

Ms Lofts worked for Centrelink. On 7 January 2008, Ms Lofts lodged a workers' compensation claim in respect of various physical and psychological injuries sustained on 8 October 2007 when she was injured trying to investigate a disturbance in the Centrelink foyer. Comcare accepted liability for the claimed conditions in a number of determinations.

Ms Lofts later lodged a claim for dysphagia arising out of the 2008 incident. Liability for that condition was denied pursuant to section 14. Ms Lofts filed an Application for Review with the Administrative Appeals Tribunal.

Despite the denial of liability, Comcare agreed to fund a gastroscopy and colonoscopy, which the resulting report revealed were procedures for the indication of dysphagia.

Prior to the Application proceeding to hearing, the parties agreed to an in-principle resolution of the claim which included an acceptance of section 14 liability in respect of dysphagia. Ms Lofts also wanted Comcare to accept liability to pay for reasonable medical treatment pursuant to section 16 associated with dysphagia. Comcare did not agree.

The issue to be determined by both the Federal Court and the Tribunal was whether the Tribunal had the jurisdiction to determine Ms Lofts' claim for compensation under section 16.

The Law

Section 14 of the SRC Act provides for the general liability of Comcare to pay compensation.

Section 16 of the SRC Act deals with compensation for the cost of reasonable medical treatment obtained in respect of an injury.

The following sections were also noted:

Section 61, regarding the making of initial determinations

Section 62, regarding the issuing of reconsiderations

Section 60, confirming that a reconsideration is a reviewable decision

Section 64, providing the Tribunal with jurisdiction to review a reviewable decision

The interaction of these sections was referred to in *Lees v Comcare* (1999) 56 ALD 84 as the “three tiered process”.

The case of *Faud and Telstra Corp Ltd* (2004) 39 AAR 496 states:

The fact that the maker of the reviewable decision did not deal with a claim for medical expenses does not preclude the Tribunal from dealing with such a claim if it was properly before the officer who made the reviewable decision.

The Tribunal’s Decision

Based on the passage from *Faud*, the Tribunal found it had the jurisdiction to determine Ms Lofts’ claim for medical expenses. The Tribunal considered that the medical expenses claim was before Comcare from around the time her claim form was lodged in 2007.

1. The Tribunal reasoned that, by responding to a question on the original workers’ compensation claim form in respect of what treatment she would require, Ms Lofts was effectively making a claim pursuant to section 16 at that time.
2. Alternatively, the Tribunal found that because Ms Lofts’ dysphagia was secondary to the conditions for which liability had been accepted, claims for medical treatment had been before Comcare since Ms Lofts submitted her first treatment account.

In addition, the Tribunal viewed Comcare’s agreement to fund the gastroscopy and colonoscopy surgery as a confirmation that it agreed to pay for costs of treatment associated with the secondary condition of dysphagia. The Tribunal considered that to require Ms Lofts to make a separate claim in respect of each expense and proceed through the three tiered process identified in *Lees* would be poor public administration.

The Federal Court Decision

The Federal Court found that the Tribunal did not have jurisdiction to determine the claim for medical expenses pursuant to section 16 of the SRC Act.

The Court accepted Comcare’s contention that the Tribunal’s decision was contrary to the decision of the High Court in *Canute v Comcare* (2006) 226 CLR 535, which confirmed that a sequelae injury should be treated as a separate injury to an accepted injury.

The Court found that section 16 operates in relation to claims for specific costs of medical treatment, whether in the past or future. The specificity of the treatment is integral to the operation of the provision as it allows Comcare to determine whether the costs of the treatment are reasonable and whether payment is appropriate.

In respect of the approach taken in *Faud*, the Court noted that this was generally limited to situations where several claims had been put before a decision maker but there had been a failure to make a decision in relation to one of them, usually because a part of the claim had been overlooked. In this instance, the Court found that there was nothing capable of being a claim under section 16 before the decision maker at the time of making the reviewable decision in respect of section 14 liability.

Lessons Learnt

The decision has implications in respect of the decision making process. Where employees have a number of claims before a decision maker, the decision maker should carefully consider what to refer to in the decision, as this will impact on the Tribunal's jurisdiction to review the matter.

For more information on this article, please contact:

Claire Tota
Solicitor
Email: claire.tota@hbalegal.com
Direct Line: (08) 9265 6011

Brett Ablong
Partner
Email: brett.ablong@hbalegal.com
Direct Line: (08) 9265 6001

Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. For any legal advice please contact us.