

What you could have earned counts: the section 19 deeming provisions

Lye and Comcare (Compensation) [2026] ARTA 1432
(1 July 2026)

Key Points

- Mr Lye (**the applicant**) has an accepted workers' compensation claim in respect of a generalised anxiety disorder under section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**).
- The Tribunal found that the applicant was not entitled to incapacity payments by operation of section 19(4) of the SRC Act, colloquially known as the section 19 "deeming" provisions which equated the applicant's incapacity payments to zero in circumstances where:
 - He had been offered suitable employment, which he accepted.
 - The suitable employment in which he was engaged at the time of ceasing employment involved a capacity to work his pre-injury hours and thus earn an amount equivalent to his pre-injury normal weekly earnings (**NWE**) i.e. his incapacity payments equalled zero.
 - By ceasing employment for reasons that had nothing to do with his compensable condition, he "failed to continue to engage" in suitable employment and was therefore deemed able to earn, in suitable employment, an amount equal to his NWE i.e. his incapacity payments remained at zero.

Background

The applicant was employed by the Bureau of Meteorology (**the Bureau**). The applicant submitted a workers' compensation claim in respect of a psychological condition and the respondent accepted liability in respect of a generalised anxiety disorder with a date of onset of 5 March 2024. On 20 October 2025, the applicant's employment was terminated by written notice and was unrelated to his compensable condition.

Following his termination from employment, the applicant made a claim for incapacity payments for the period the period 13 November 2025 to 12 December 2025. The respondent issued a reviewable decision dated 22 December 2025 which determined that the applicant was not entitled to incapacity payments for the period and there was no present liability as of and from 4 December 2025 to pay incapacity payments.

The Law

Section 19(4)(c) of the SRC Act provides that “*where, after becoming incapacitated for work, the employee received an offer of suitable employment and, having accepted that offer, failed to engage, or to continue to engage, in that employment*”, Comcare is to have regard to the amount per week that the employee would be earning in that employment if he or she were engaged in that employment.

Conclusion

The applicant submitted that the respondent had taken “isolated words and phrases” from medical records, including the Certificates of Capacity, and removed them from their “surrounding context” and treated them as meaning something different to what was intended by his treating practitioners. He contended that he had an ongoing rehabilitation need, and that there were outstanding workplace adjustments which had not been implemented. The applicant further contended that there had never been an explicit offer or acceptance in relation to his suitable duties. The respondent submitted that the Certificates of Capacity issued by the applicant’s treating general practitioner very clearly certified him fit to work his pre-injury hours from 7 August 2024 and the applicant had been engaged in full-time employment from that date.

The Tribunal accepted the respondent’s submission and found that the medical records and certificates of capacity expressed the applicant’s capacity for work in clear and unequivocal language. The Tribunal concluded that there had been an offer and acceptance of suitable employment, in which the applicant failed to continue to engage by way of his suspension and termination from employment. Upon termination, the applicant retained his capacity to earn income in suitable employment by obtaining other employment and there was no evidence to conclude otherwise. As such, the applicant was not entitled to incapacity payments for the specific period disputed and was not entitled to ongoing incapacity payments.

Lessons Learnt

This decision provides a useful reminder that an employee's entitlement to incapacity payments is not determined solely by whether their employment has ceased or whether they are in fact earning income. Where an employee has demonstrated a capacity to perform suitable employment, and has accepted and engaged in that employment, section 19(4) of the SRC Act can operate to deem the employee capable of continuing to earn the income that employment would have provided.

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