

Unfair Treatment or Reasonable Administrative Action?

Phillips and Comcare [2026] ARTA 1299
(10 July 2026 – ART Only)

Key Points

- The applicant claimed compensation for a psychological injury which he considered was significantly contributed to his employment. The respondent declined liability for compensation under section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act) on the basis that the applicant's condition arose as a result of reasonable administrative action.
- The Tribunal considered the principles in *Comcare v Martin* and *Comcare v Stewart* and concluded that the applicant's claim was excluded by way of the reasonable administrative exclusion provision under section 5(A)(2) of the SRC Act.

Background

The applicant was previously employed by the Australian Federal Police (**the AFP**). In March 2023, the applicant made a claim for compensation for adjustment disorder which he stated arose on 27 January 2023. The respondent denied liability pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**) on the basis that the applicant's condition arose as a result of reasonable administrative action.

The Law

Section 5(A)(2) of the ART Act provides:

(2) For the purposes of subsection (1) and without limiting that subsection, reasonable administrative action is taken to include the following:

- (a) a reasonable appraisal of the employee's performance;
- (b) a reasonable counselling action (whether formal or informal) taken in respect of the employee's employment;
- (c) a reasonable suspension action in respect of the employee's employment;

(d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee's employment;

(e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c) or (d);

(f) anything reasonable done in connection with the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment.

Conclusion

Reasonableness of Administrative Action

The applicant asserted that the decision was unreasonable conduct, both substantively and procedurally, and therefore, was not reasonable administrative action. He further submitted that the decision was a result of conflict and unfair treatment where the perceptions of him and his performance had been formed without a fair process. The respondent submitted that the immediate precipitating event to the applicant's diagnosable psychological condition was the decision not to offer him higher duties which the applicant had become aware of on 27 January 2026.

The Tribunal therefore approached the matter consistent with the principles in *Comcare v Martin* (2016) 258 CLR 467, and agreed with the respondent's submission. When applying this approach, the Tribunal found that the applicant would not have developed his condition in the absence of the denial of higher duties.

The question before the Tribunal was then whether the denial of the higher duties was "*taken in a reasonable manner*". The Tribunal relied on the statements of Justice Robertson in *Comcare v Stewart* [2019] FCA 365 at [68]-[70] where he said:

...the issue of whether reasonable administrative action was "taken in a reasonable manner" in respect of the employee's employment was a question of objective fact, related to the specific conduct involved, was to be assessed without the benefit of hindsight, and did not involve asking whether the action could have been done more reasonably. For this reason, the issue has to be addressed as a matter of substance.

The Tribunal highlighted the various concerns raised by both of the applicant's reporting line managers and found that on the balance of probabilities, the employer's concerns with the applicant's performance were justified. The Tribunal concluded that while the communication of the decision to deny the applicant higher duties was not perfect, it was reasonable in the circumstances, and this satisfied the standard to rely on the reasonable administrative action exclusion.

Lessons Learnt

The decision illustrates the enduring principles established in the case law with respect to respondents relying on the reasonable administrative action exclusion. When considering reasonable administrative action, the Tribunal is required to look at the larger picture of events that preceded the action. The Tribunal must consider whether the claimed psychological condition would have resulted from the administrative action and whether the totality of the circumstances demonstrates the administrative action was undertaken reasonably.

This is particularly the case in decisions based on ongoing performance of the employee. The decision supports the long-standing principles that the employer's conduct does not need to be entirely perfect, but the totality of the circumstances need to demonstrate that the action was undertaken reasonably and in accordance with the employer's policies and procedures.

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