

**Senate Standing Committee on Education and Employment - Employment**

**QUESTIONS ON NOTICE  
Budget Estimates 2014-2015**

**Agency - Comcare**

**Department of Employment Question No. EM0742\_15**

**Senator Bilyk provided in writing.**

**Question**

**Comcare - Act of Grace Payment**

Relating to an injured Commonwealth worker, Ms Katherine Heather Excell: Mr O'Connor's letter to me of 31 March 2014 states: ""The scheme for compensation for defective administration doesn't apply to Comcare. I believe it should. My call for legislative change has not, so far, been accepted. That said, Mr Wallace's report concludes that Ms Excell has received all her entitlements. He doesn't identify any unreasonable lapses or failures of administration, so it's unlikely the scheme would apply. Similarly, I can't support the call for an Act of Grace payment.

How does Comcare reconcile the claim that Mr Wallace's report 'doesn't identify any unreasonable lapses or failures of administration' with:

- paragraphs 4.25 and 4.27 of the report where Mr Wallace claims that, had the relevant officers of Comcare and DSS sought more active assistance from Dr Ashley, Ms Excell may have sufficiently recovered such that she may have been able to return to some form of remunerative employment with DSS or another Commonwealth agency?
- paragraph 4.15 of the report where Mr Wallace notes that sick leave records were re-written (this was done without Ms Excell's knowledge)?
- paragraph 4.17 of the report where Mr Wallace accept that Ms Excell lodged a second claim for compensation, but this claim cannot be located?

In stating that there have been no 'unreasonable lapses or failures of administration' why is Comcare relying solely on Mr Wallace's report when many failures of administration have already been identified and in some cases accepted by Comcare? – for example:

- Dr Warwick Ashley's advice in his letter of 16 December 1988 that an 'acute exacerbation of [Ms Excell's] symptomatology had occurred following a visit from officials [on 13 December 1988]'.  
• Incorrect work, compensation and personal history was provided to independent medical examiners and treating practitioners when seeking reports (for example, that Ms Excell was actively refusing treatment, that Ms Excell had been retired on her insistence, that Ms Excell was transferred off the counter, etc.)  
• It took until 2004 for Comcare to acknowledge that Ms Excell was suffering from Post-Traumatic Stress Disorder (PTSD).  
• Comcare advised the Administrative Appeals Tribunal that Ms Excell had only lodged one claim for compensation.

- It took until 2011 for Comcare to accept that this was a new injury.
- Comcare advised treating practitioners in 2011 that Ms Excell had been working 5 hours per week from 1992.
- Computer records stated that Ms Excell's 45 weeks of compensation ran out 2 March 1988.
- Computer records stated that Ms Excell had been permanently redeployed October 1992.

Comcare failed, especially between 1988 to 1992 to advise Ms Excell of her rights and entitlements including options such as graduated return to work. Will Comcare assist Ms Excell in seeking compensation for their and the Department of Social Security's failure to consult her treating medical professionals, and to put in place a proper rehabilitation program so she could return to employment?

### **Answer**

The quotes from Mr Wallace's report imply he was unequivocal in his findings of the issues highlighted in the question.

Paragraphs 4.25 and 4.27 of Mr Wallace's report state it is "possible" had Ms Excell received more active assistance she "may" well have sufficiently recovered such that she may have been able to return to work. Mr Wallace's use of "may" and "possible" provide insufficient certainty to indicate more active assistance would have resulted in an alternative rehabilitation outcome. The report goes on to state Ms Excell's treating doctor at the time considered there was very little prospect of providing Ms Excell with a rehabilitation program that was likely to assist in returning her to work and this was confirmed by the Commonwealth Medical Officer at the time. Therefore Comcare does not consider these paragraphs identify an unreasonable lapse or failure of administration.

Paragraph 4.15 references "re-written" sick leave records. Comcare notes two versions of sick leave records exist and considers this is a matter for DHS to respond to, not Comcare.

In paragraph 4.17 Mr Wallace notes "it appears in about July 1988 Ms Excell made a further claim for compensation. That claim has not been located." As per Mr Wallace's report, Comcare has no record of receiving Ms Excell's claim in July 1988. Mr Wallace notes Comcare "very belatedly" accepted Ms Excell suffered from PTSD, however, there has been no demonstration of financial detriment as a result of the late acceptance and Mr Wallace has confirmed in his report Ms Excell has received all of her correct entitlements.

The question also notes a number of examples from documentation other than Mr Wallace's report. Comcare engaged Mr Wallace to ensure Ms Excell had received her correct entitlements. Mr Wallace has confirmed this to be the case.

As Comcare's primary function as a determining authority is to ensure injured workers receive their correct entitlements Comcare does not consider there has been any defective administration in regards to Ms Excell's case and as such cannot support Ms Excell's claim for an Act of Grace payment.

Any compensation Ms Excell believes she is entitled to as a result of administrative deficiencies by the Department of Social Security in its capacity as the rehabilitation authority is a matter for her to take up with the Department of Human Services (DHS). Comcare is aware Ms Excell is pursuing a claim. Comcare will assist DHS in their determination of any compensation amount as and when requested.

Comcare notes Senator Bilyk and Ms Excell disagree with Comcare's stance on this issue.