

Senate Standing Committee on Education Employment and Workplace Relations

**QUESTIONS ON NOTICE
Additional Estimates 2011-2012**

Agency - Comcare

DEEWR Question No. EW1107_12

Senator Bilyk asked on 15 February 2012, Hansard page 70

Question

Comcare - obligation to issue the advice under section 37

Senator BILYK: I am pleased to hear that after 23 years people might finally be focused, but it is still a great concern to me, Mr O'Connor. I would have thought that we might have been able to have this resolved within this time frame, but it just seems to linger on. I am concerned that the agency may not be committed to ensuring an outcome that is suitable to the client. What point in the development of a rehabilitation program is the obligation to issue the advice under section 37? Do you know that? Mr O'Connor: I would have to take that on notice.

Answer

Comcare has provided the following response.

There is no obligation to issue a section 37 determination.

Under section 37(1) of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act), a rehabilitation authority, typically the employer, may make a determination that an employee should undertake a rehabilitation program (program). However, that program is not issued as a determination until there has been consultation with key people involved with the rehabilitation, including the injured employee.

The program is first developed in consultation with the key people involved with the rehabilitation; the injured employee, the case manager, the injured employee's supervisor, workplace rehabilitation provider (approved provider), and if applicable, the treating doctor. In the constituent's case, a supervisor is not involved because the constituent is an ex-employee.

The rehabilitation authority must also have regard to the matters described in section 37(3) of the SRC Act, including 'the employee's attitude to the program'.

Having developed the program in consultation with the key people involved with the rehabilitation and having had regard to the matters in section 37(3), the rehabilitation authority may then sign and issue the program as a determination under section 37(1) of the SRC Act.