SENATE STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

QUESTIONS ON NOTICE SUPPLEMENTARY ESTIMATES 2009-10

Agency Comcare

DEEWR Question No. EW606_10

Senator Marshall asked on 21 October 2009, EEWR Hansard page 22

Question

NUMBER OF APPLICATIONS FOR REVIEW BY AAT SETTLED PRIOR TO TRIBUNAL HEARING AND BY THE TRIBUNAL

Yes, please do that. I also want to know how many of those that you challenge legally you pursue past the steps of the court. That is fundamental to my concerns. It has been put to me—I would like you to be able to prove otherwise if you can; if you cannot, I will have more questions at a later date—that, in order to discourage people from asking for reconsideration, you do not legally challenge every one of those positions and then you effectively settle at the doors of the court. That may not be a large cost to Comcare but it is, of course, a large cost to people in this situation that are seeking a reconsideration. That goes back to the question of being a model litigant or not. I would like all the information about how many claims are challenged, how many are settled before they go to the tribunal, how many are challenged and settled before completion, how many determinations you finally get through the AAT and how many you win or lose.

The CEO responded —Understood. We need to clarify that it would not be Comcare that would be challenging; it would be people affected by Comcare's decisions who either do not understand or do not accept the decision and who seek to further test it. We would then take that through. But I understand the context of the question.

Answer

Comcare has provided the following response:

An initial decision made by Comcare under the *Safety, Rehabilitation and Compensation Act* 1988 (SRC Act) is called a 'determination'. A determination is defined in s60 as a decision made under certain sections of the SRC Act. Broadly, there are two types of claims decisions made by Comcare:

- "Initial liability" decisions, that determine whether liability exists under s14 of the SRC Act for a new claim related to workplace injury or disease; and
- Determination of compensation payable under the SRC Act in respect of previously accepted claims, such as the assessment of normal weekly earnings, incapacity, medical treatment, rehabilitation, permanent impairment and redemption etc.

Comcare may undertake internal review of an initial determination under s62 of the SRC Act, at the request of a claimant, the Commonwealth, a Commonwealth Authority or licensed corporation affected by the decision; or on Comcare's own motion.

If a claimant, the Commonwealth, a Commonwealth authority or a licensed corporation affected by the decision is dissatisfied with a reviewable decision, they can seek review of the decision by the Administrative Appeals Tribunal under s64 of the SRC Act.

The following information relates to claims decisions made by Comcare in 2008-09:

- 1. Comcare received 4,024 new claims seeking compensation for workplace injury or disease. In that period, Comcare did not accept liability in 22% of new claims received at the initial liability stage;
- 2. Comcare made 1,432 reviewable decisions under s62 of the SRC Act, of which 40% related to initial liability and 60% related to determination of benefits for previously accepted claims;
- 3. 505 Applications for Review of decisions made by Comcare were filed in the Administrative Appeals Tribunal (AAT); and
- 4. 676 Applications for Review of decision made by Comcare were finalised in the Administrative Appeals Tribunal (this includes applications filed in previous years).

Data supplied by the AAT for applications finalised in 2008-09 is summarised at Table 1 below. It shows that 392 applications were finalised by consent, 182 applications were either withdrawn or dismissed prior to hearing and 102 applications proceeded to hearing by the Tribunal.

Of the 102 applications decided by the AAT, 56 resulted in Comcare's original decision being affirmed, with the remaining 46 being set aside or varied by the Tribunal.

Table 1: Outcome of claimant applications to the AAT 2008-09*

	No. of applications finalised	No. of original decisions affirmed	No. of original decisions set aside or varied	Affirmation rate
Applications heard and determined by the AAT	102	56	46	55%
Applications finalised by consent	392	81	311	21%
Applications dismissed by consent	4	4	n/a	n/a
Applications withdrawn by applicant	171	171	n/a	n/a
Other applications dismissed, etc	7	7	n/a	n/a
Outcomes of all applications	676	319	357	47%

^{*} Based on data supplied from the AAT