

## Senate Standing Committee on Education and Employment

### QUESTIONS ON NOTICE Supplementary Budget Estimates 2013-2014

#### Agency - Comcare

Department of Employment Question No. EM0115\_14

Senator Ludwig asked on 21 November 2013, Hansard page 38

Comcare Jurisdictional Policy Advice in response to the High Court's decision in *Comcare v PVYW* [2013].

#### Question

##### Comcare - Availability of policy document

Senator LUDWIG: So on the High Court's decision, do you have a note about how you then apply that? I have not followed that; I just followed the press on it in that general sense. The question then is: you have now got a High Court decision, that is correct law, and so how would you apply that? Do you have a policy, an application or a note that describes to employers—and for your Comcare people—how to apply that? Mr O'Connor: Correct, that has been developed and we will be having that checked by the Solicitor-General, who ran the argument in front of the High Court to make sure that it is an accurate representation in the High Court. But that will go out in what we call a jurisdictional policy advice that will help explain in plain English to employers and their workers what the situation will be, so that they can get clarity around those circumstances. Senator LUDWIG: I like that. It is very helpful. That document, then, is it available more publicly or do you put that on the web? Mr O'Connor: It will be available on our intranet, but it is not yet there. Senator LUDWIG: Could you let the committee know when that is available? I would not mind having an opportunity to read it. Mr O'Connor: Yes.

#### Answer

In response to the High Court's decision in *Comcare v PVWY (PVYW)* Comcare has prepared a *draft* Jurisdictional Policy Advice (JPA).

Comcare is currently seeking legal clearance of the draft JPA content, before consulting with the Department of Employment and determining authorities under the Comcare scheme. Comcare will then collate feedback and update the draft JPA if necessary, before seeking final legal clearance from Comcare General Counsel.

It is expected that the JPA will be finalised and publicly released by February 2014. Comcare will provide the Committee with the JPA when it becomes available.

#### Background

##### Jurisdiction Policy Advice

JPA's are issued in response to scheme significant Court decisions (such as *PVYW*) and legislative updates and changes. Their purpose is to provide simple English

policy guidance to ensure that, as far as practicable, there is equity of outcomes resulting from administrative practices and procedures used by Comcare, licensees and the Military Rehabilitation and Compensation Commission in the performance of their respective functions.

### ***PVYW***

The majority of the High Court (4:2) in *PVYW* has clarified the meaning of the phrase 'in the course of employment' where an employee sustains an injury during an interval or interlude during an overall period of work.

In *PVYW*, the employee had been required by her employer to work for two consecutive days, away from her usual place of work. She stayed in a motel paid for by her employer. Whilst there, the employee engaged in sexual intercourse and during that activity a light fitting was pulled from its mount causing her injuries.

The High Court found that an inducement or encouragement to be at a particular place (the motel) does not provide the necessary connection to employment merely because an employee is injured whilst engaged in an activity at that place. When the circumstances of an injury involve the employee engaging in an activity at the time of the injury the relevant question is: did the employer induce or encourage the employee to engage in that activity? On the facts the majority held that the answer was no.