

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2010-2011**

Agency - Comcare

DEEWR Question No.EW0549_11

Senator Bilyk asked on 20/10/2010, Hansard page 11.

Question

COMCARE ADMINISTRATIVE APPEALS TRIBUNAL

Mr O'Connor—I understand the context that the Senator is explaining with regard to her constituent. My recollection, if I do have the right matter in mind, is that the AAT— Senator BILYK—It is a fairly ongoing one. Mr O'Connor—provided a very comprehensive consideration in its 'reasons for decision' about the competing evidence. I would have to take it on notice to look again at that particular element—whether or not treating practitioners or medico-legal experts who were retained by the federal worker in this case did not have the opportunity to have that material before the Administrative Appeals Tribunal. Senator BILYK—I would appreciate it if you could do that.

Answer

Comcare has provided the following response:

We believe this question relates to Ms Katherine Heather Excell, a former employee of the Department of Social Security (now Centrelink).

Ms Excell has an accepted claim for compensation in respect of a psychological disease. Ms Excell made her claim for compensation in March 1988 and, at the time her claim was accepted, the date of her injury was deemed to be 16 February 1988.

On 19 May 2004, Ms Excell (through her legal representatives) applied to Comcare for a lump sum permanent impairment payment under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). Comcare rejected the claim on 18 July 2005 on the basis that Ms Excell's impairment was permanent prior to 1 December 1988, the result being that no lump sum compensation would be payable under the SRC Act's predecessor.

Ms Excell sought review of Comcare's decision and, when Comcare affirmed its initial decision, Ms Excell sought review of that decision in the Administrative Appeals Tribunal (AAT).

In its reasons for decision, dated 16 October 2007, The AAT affirmed Comcare's decision that Ms Excell's condition was permanent prior to 1 December 1988 (see *Excell v Comcare* [2007] AATA 1857). It did so after considering the evidence given at hearing and the documents contained in the Tribunal Documents (referred to as T-Docs), including the medical reports from Ms Excell's treating GP and psychiatrist.

During the course of the AAT proceedings, Comcare had filed a set of T-Docs which contained all the relevant documents on which Comcare had made its decision. Those documents were available to the AAT and Ms Excell. The T-Docs contained reports from Ms Excell's GP, Dr Beltz, her treating psychiatrist, Dr Ashley, and a report from a consultant psychiatrist who had examined Ms Excell for the purpose of assessing her degree of impairment, Dr Pridmore.

As the matter progressed in the AAT, Ms Excell filed expert evidence in support of her application from a psychiatrist, Dr Weidmann. Similarly, Comcare obtained further expert evidence from a psychiatrist, Dr Sale.

The matter proceeded to a hearing in the Hobart registry of the AAT in September 2007. Ms Excell had legal representation through the AAT proceedings and was represented by counsel at the hearing. Ms Excell called two medical experts to provide evidence on her behalf at the hearing – Drs Weidmann and Pridmore.

Neither Ms Excell nor her legal representatives raised any issue about an inability to have Ms Excell's GP and psychiatrist give verbal evidence at the hearing. Ms Excell did not call those doctors to give evidence in support of her application. In any event, the AAT had access to their various opinions in the form of written reports.