

## *Topping v Comcare (Compensation) [2015] AATA 525*

### (17 July 2015)

#### Key Points

- Accepting liability of an injury does not automatically mean that medical treatments sought for relief of the injury are accepted forms of treatment.
- The question must be asked; can this treatment be considered a “medical treatment” and if so, whether that particular treatment is *reasonable* in the circumstances.

#### Background

In 2005 Ms Topping, a trained nurse and midwife, commenced work in Canberra at the Department of Health and Ageing. In 2009 the relationship between Ms Topping and her supervisor became strained ending in confrontation on 21 July 2009. Ms Topping took time off work and in August 2009 she made a claim for workers’ compensation.

In December 2009 Comcare accepted liability, pursuant to section 14 of the *Safety Rehabilitation and Compensation Act 1988* for “*adjustment reaction with anxious mood*”, which was later amended to “*post-traumatic stress disorder*”. For treatment of these psychiatric disorders Ms Topping sought help from Dr Fredoroff (GP) and Linda Bruce (Psychologist), as well as seeking alternative relief treatments through massage and osteopathy from 2010 to 2014.

Comcare accepted that massage and osteopathy are considered medical treatments under section 16 of the Act, it did not accept that massage and osteopathy were reasonable medical treatments in light of Ms Topping’s injury. Comcare therefore declined liability for massage and osteopathy pursuant to section 16 of the SRC Act. Ms Topping appealed the decision.

The Tribunal was required to decide whether:

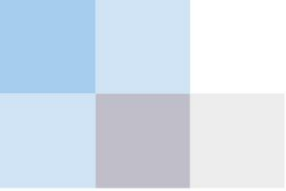
- massage and osteopathy constituted reasonable medical treatment in relation to Ms Topping’s injury;

#### The Law

Section 16 of the SRC Act relevantly requires that Comcare pay the cost of medical treatment obtained in relation to an injury, where that treatment was reasonable for the employee to obtain in the circumstances.

Section 4 of the SRC Act defines “medical treatment” as:

...  
(b) *therapeutic treatment obtained at the direction of a legally qualified medical practitioner; or*



...  
(d) therapeutic treatment by, or under the supervision of, a physiotherapist, osteopath, masseur or chiropractor registered under the law of a State or Territory providing for the registration of physiotherapists, osteopaths, masseurs or chiropractors, as the case may be;

and states that therapeutic treatment “includes an examination, test or analysis done for the purpose of diagnosing, or treatment given for the purpose of alleviating, an injury”.

## Conclusion

The Tribunal considered two questions as presented in section 16(1) of the Act, both of which needed to be answered in the affirmative for Ms Topping to be successful. Firstly whether massage and osteopathy are deemed “medical treatments” under section 16 of the Act. By sheer definition under section 4(d) of the Act, the Tribunal concluded that these two treatments were considered medical treatments.

The next question to be asked was one of reasonableness; are the two treatments reasonable for the purposes of treating Ms Topping’s psychiatric disorders? This was denied. Although evidence was presented that they relieved aches and pains, the medical evidence was that massage and osteopathy were not in fact treating the psychiatric disorders and therefore could not be said to be reasonable in the circumstances.

## Lessons Learnt

The decision is a reminder that not all treatment obtained in respect of a compensable injury is compensable. Medical evidence should be obtained in circumstances where the reasonableness of the treatment is in doubt.

## Contact

For more information on this article, please contact:

Claire Tota  
Associate  
T: +61 (0) 8 9265 6011  
M: 0418 656 164  
claire.tota@hbalegal.com  
www.hbalegal.com

Brett Ablong  
Partner  
T: +61 (0) 8 9265 6001  
M: 0400 263 807  
brett.ablong@hbalegal.com  
www.hbalegal.com

*Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. For any legal advice please contact us*