

## Release from implied undertaking? There might be no need! *Chin v Comcare [2017] AATA 634*

### Key Points

- The Tribunal was required to consider whether Comcare could use reports obtained in the course of proceedings for claims management purposes, despite them being caught by the implied undertaking.
- The Tribunal found that, while the implied undertaking applied to the documents, Comcare's proposed use of the documents did not constitute a collateral or ulterior purpose and therefore no release was required.

### Background

Ms Chin had an accepted claim for compensation for injuries she sustained when she slipped at work on 27 January 1995. The substantive matter before the Tribunal concerned Ms Chin's entitlement to compensation for household services.

As part of the proceedings, Comcare summonsed records from Ms Chin's treating practitioners. Those documents were provided to Dr Mohamad Mourad for the purposes of obtaining a report.

Comcare later sought to rely on two reports from Dr Mourad for claims management purposes, and made an application to the Tribunal to be released from the implied undertaking.

The question for the Tribunal was whether the implied undertaking applied to Comcare in relation to the documents and, if it did, whether Comcare required a release from the implied undertaking to use the documents for claims management.

### The Law

Part 5 of the Administrative Appeals Tribunal's *General Practice Direction* outlines that where documents are produced under compulsion in Tribunal proceedings, a party must not use the documents for any other purpose than the purpose for which they were provided to the Tribunal.

The authority in *Esso Australia Resources Ltd v Plowman* provides that the person who receives the documents or information cannot use them for a collateral or ulterior purpose. A collateral or ulterior purpose is defined in *Ampolex Ltd v Perpetual Trustee Company (Canberra) Ltd* as "purposes different from the conduct of the proceedings".

The Tribunal's *General Practice Direction* sets out the requirements for an application to be released from the implied undertaking.



## Conclusion

Senior Member Popple found that the implied undertaking applied to Comcare in relation to Dr Mourad's reports. Interestingly, SM Popple accepted Comcare's submission that claims management was not a collateral or ulterior purpose, and found that no release was required for the proposed use of the documents.

The key point expressed by SM Popple was that claims management was not a purpose collateral or ulterior to the substantive proceedings. SM Popple's reasoning was that the Tribunal stands in the shoes of the decision maker, and any decision made by it in the proceedings would be a claims management decision. SM Popple reasoned that future decisions about Ms Chin's entitlement to compensation for the accepted injuries were not "*different*" to, "*outside*" or "*otherwise than in relation to*" that purpose.

SM Popple commented that his decision was based on the fact that Comcare's proposed use of the documents related to the same worker, and the same injuries that were in dispute before the Tribunal. He commented that his decision may have been different if the proposed use related to the same worker, but different injuries.

## Lessons Learnt

The decision potentially allows self-insurers and employers under the SRC Act to use documents obtained during Tribunal proceedings for claims management purposes, without seeking a formal release from the implied undertaking.

No appeal has been sought in this matter at the time of writing.

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