

## AFP Officer's appeal dismissed - Full Federal Court upholds reliance on section 53 *Leach v Comcare* [2021] FCAFC 134

### Key Points

- The Full Federal Court was asked to decide whether the Federal Court and the Tribunal had erred in finding that Mr Leach had failed to provide notice of his injury as soon as practicable after he became aware of it.
- The Full Court dismissed the appeal.

### Background

Mr Leach was a detective employed by the Australian Federal Police (AFP). The majority of Mr Leach's work was in organised crime and drug related areas.

On 23 May 1997, Mr Leach's employment was suspended based on suspicions that he had committed a disciplinary offence, being threats of physical violence against colleagues, during a security interview on 8 April 1997. On 21 November 1997, Mr Leach's position was made redundant.

On 8 March 2016, Mr Leach made a claim for workers' compensation for a psychological injury sustained as a result of his employment. Mr Leach's claim was denied on the basis that he had not given notice of the injury as soon as practicable after he became aware of it. Mr Leach sought review of that decision in the Administrative Appeals Tribunal (**the Tribunal**).

### The Law

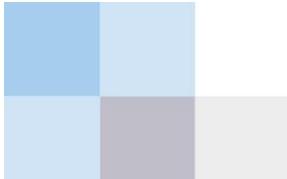
Section 53 of the SRC Act states that notice of an injury must be given to the relevant authority as soon as practicable after the employee becomes aware of the injury.

There are a number of exceptions set out in section 53 including ignorance, mistake or any other reasonable cause.

### Conclusion

The Tribunal found that Mr Leach had not given notice of his injury to Comcare as soon as practicable after he became aware of his injury in accordance with section 53(1) of the SRC Act and the decision under review was affirmed. Mr Leach appealed the Tribunal's decision to the Federal Court.

Mr Leach's submissions focused on the Tribunal's finding that he was not ignorant of his right to make a claim for compensation. Mr Leach said this was unreasonable and illogical and therefore wrong in law because there was no logical connection between it and the evidence before the Tribunal. The primary Judge concluded that none of Mr Leach's questions of law had merit and ordered the appeal be dismissed. Mr Leach further appealed to the Full Federal Court.



The Full Federal Court dismissed the appeal with costs. Collier J found:

1. that no error was apparent in respect of the onus of proof.
2. he was not persuaded that the Tribunal made its findings based on “mere conjecture”, rather the Tribunal’s conclusions were determined by reference to the evidence before it.
3. to the extent that Mr Leach contended that the Tribunal erred in failing to apply the rule in *Jones v Dunkel* in respect of the failure of Comcare to call Ms Jacob as a witness, he rejected that submission.
4. it was evident that the principles the primary Judge applied were correct.
5. there was no merit in the contention that the primary Judge evaluated the evidence and made reliability findings arising from a witness’ evidence, thus straying into impermissible merits review.
6. he was not persuaded that s 37AG(1)(a) of the *Federal Court of Australia Act 1976* (Cth) was enlivened in the circumstances.

Charlesworth J agreed that the appeal should be dismissed, however disposed of the issues differently. He found that the process of reasoning the Tribunal adopted to arrive at the conclusion was one that was open to it. He stated that it did not matter that there were alternative routes available to the same result, nor that there may have been an alternate route to a result more favourable to Mr Leach.

Snaden J agreed with Collier and Charlesworth JJ that the appeal should be dismissed, with the usual orders as to costs.

## Lessons Learnt

This decision confirms that in circumstances where employees are aware of their rights to make a claim for workers’ compensation and fail to do so within a reasonable timeframe, then it is open to Comcare to deny liability for the claim under section 53 of the SRC Act where prejudice can be established.

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