

To summons, or not to summons, that is the question *Martinovic and Australian Capital Territory [2021] AATA 3435*

Key Points

- An employee of the ACT objected to a summons issued to obtain her medical records on the basis that the records contained information which, if disclosed, would remove her right to privacy on matters which she believed had no relevance to the proceedings.
- The Tribunal held that it is not necessary to establish that the material sought has substantial relevance to the issues that must be decided in the proceedings, but the summons must have apparent or adjectival relevance to the issues in the principal proceeding.
- The Tribunal found in favour of the ACT and the objection to the summons was refused.

Background

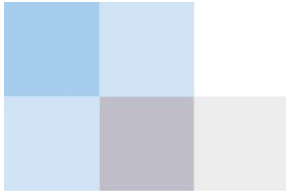
Ms Martinovic claimed workers' compensation for a psychological condition, suffered as a result of her employment. Employers Mutual Limited (EML), on behalf of the Australian Capital Territory (ACT), determined that the ACT was liable to pay compensation under section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). Liability was further accepted to pay compensation for medical treatment and incapacity for work for a discrete period of time only. That determination was affirmed on reconsideration and Ms Martinovich sought further review at the Administrative Appeals Tribunal (the Tribunal).

During the proceedings, the Tribunal summonsed records held by Services Australia (Medicare) and the Barton General Practice at the request of the ACT. The medical records were produced to the Tribunal and Orders were made for each party to have access.

Ms Martinovic objected to the ACT having access to these medical records on the basis that they contained information "*that is distinctly recognised and related to particular personal and private health matters which I believe would, if disclosed, remove my right to privacy on particular matters that I believe are of no relevance and unnecessary*". She requested non-disclosure orders in respect of particular documents and records. The Tribunal was required to consider the nature of the information covered by the objection and the relevance to the issues being determined in the proceedings.

The Law

Section 40A(1)(b) of the *Administrative Appeals Tribunal Act 1975* (AAT Act) provides that the Tribunal may summon a person to produce any document or other thing specified in the summons.



Under section 58 of the SRC Act, a relevant authority has power to request the provision of information by a claimant where it is satisfied the claimant has, or is reasonably able to obtain, information or a document that is relevant to the claim.

Conclusion

The Tribunal noted that a summons must be for a legitimate forensic purpose and although it is not necessary to establish that the material sought has substantial relevance to the issues that must be decided in the proceedings, it must have apparent or adjectival relevance to the issues in the principal proceeding.

The Tribunal was satisfied that the documents produced by Services Australia and the Barton General Practice had adjectival or apparent relevant to the issues to be decided and found no reason that the ACT should not be granted access to the documents. The Tribunal noted that access to the documents comes with a legal obligation not to use the documents for any purposes other than the proceedings, that Ms Martinovic would have the opportunity to object should the ACT seek to use or to tender in evidence of any of the summonsed records and that it was open for her to apply for confidentiality orders under s 35(3) or (4) of the AAT Act in respect of her identity. Accordingly, Ms Martinovic's objection was refused, and the ACT was granted access to the documents.

Lessons Learnt

Any summons issued must be for a legitimate forensic purpose. It is not necessary to establish that the material sought has substantial relevance to the issues that must be decided in the proceedings, but the summons must have apparent or adjectival relevance to the issues in the principal proceeding.

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