

Objection refused! Tribunal issues summons for mental health records

Australian Electoral Commission and Comcare [2022] AATA 138

Key Points

- A treating psychologist objected to a summons for him to produce medical records, on the grounds that it would be a breach of privacy and duty of care to his patient.
- The Tribunal found that privacy considerations and duty of care must give way to the legal obligation to comply with a summons.
- The objection to the summons was refused.

Background

Mr McKenzie claimed workers' compensation for a psychological condition, suffered as a result of his employment with the Australian Electoral Commission (the **AEC**). On 26 February 2020, Comcare accepted liability to pay compensation under section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (the **SRC Act**).

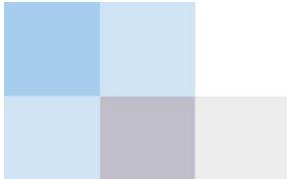
Comcare made a further determination in relation to compensation for incapacity for work. The AEC sought review of that determination, which was affirmed on reconsideration and the AEC sought further review at the Administrative Appeals Tribunal (the **Tribunal**).

The AEC requested the Tribunal to issue a summons for the production of Mr McKenzie's medical records held by Mr de Beer, treating psychologist, but he objected to the summons and did not comply. Mr de Beer argued that the records contained private information about Mr McKenzie's mental health and because he did not have Mr McKenzie's permission to provide the records, it was a breach of confidentiality and of his duty of care to his patient. Mr de Beer believed the records may be misinterpreted by those without medical training who were not qualified to read or interpret the records correctly. Mr de Beer offered to provide a medical report rather than the medical records, if he was appropriately remunerated.

Mr de Beer's objection was the subject of interlocutory 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.



Conclusion

The Tribunal noted that a summons must be for a legitimate forensic purpose and have apparent or adjectival relevance to the issues in the principal proceedings. The Tribunal found that the summons was not oppressive or speculative to the extent that it should be set aside.

The Tribunal found that Mr de Beer's duty of care to his patient and his concerns about privacy must give way to his legal obligation to comply with the Tribunal's summons. The Tribunal found that the misinterpretation of medical records may be a matter of evidence in the principal proceedings but was not a reason to strike out the summons. Mr de Beer's offer to provide a medical report was not sufficient to answer the Tribunal's summons.

Accordingly, Mr de Beer's objection to the summons was refused and he was provided with an extension of time to comply. The Tribunal noted that access to any records produced may still be refused, if objections to disclosure of the documents are made.

Lessons Learnt

A summons for production of documents may not be set aside due to concerns about confidentiality and privacy, even if the request is for personal medical information. The Tribunal's power to issue a summons reflects the public interest and just review of administrative decisions, plus promotes public trust and confidence in the Tribunal's decision making.

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