



**Cameron Hall**  
COMPENSATION LAWYERS



# Comcare Claims for Aggravation of Degenerative Condition

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If you have an accepted [Comcare workers' compensation claim](#) as an aggravation of a medical condition related to degeneration, you may have questions about what this means for your entitlements, medical treatment, and future work capacity.

Understanding your rights under the Safety, Rehabilitation and Compensation Act 1988 ("the Act") is essential to ensuring you receive the full benefits you deserve after a workplace injury or aggravation of a pre-existing or degenerative condition.

This article will help you to understand:

What an "aggravation of medical condition related to degeneration" means in a Comcare claim;

Your rights to medical treatment and compensation;

Incapacity payments to cover loss of income;

Return-to-work obligations;

Permanent impairment claims (lump sum compensation);

What happens if Comcare tries to reduce or deny your benefits;

How to dispute a decision regarding your claim.

## What does “aggravation of medical condition due to degeneration” mean?

Some medical experts will say that everyone’s body begins to degenerate from about 25 years of age. Many work injuries are the result of an event/incident (or a number of different incidents) that serve to aggravate these pre-existing degenerative changes in various parts of the body.

The Act recognises that even if you had a prior condition, workplace activities/events/incidents can aggravate parts of the body which have degenerated (from natural aging), making you eligible for workers’ compensation.

At the outset, you should become familiar with a few key terms:

**Aggravation:** When work duties cause increased pain, reduced function, or accelerated deterioration of a pre-existing condition.

**Temporary aggravation:** The work-related worsening improves more or less completely with treatment and/or rest.

**Permanent aggravation:** The aggravation causes lasting damage. Medical treatment might improve the degree of pain and discomfort, but it doesn’t go away.

**Comcare’s Liability:** They only cover the work-related aggravation, not the underlying degeneration. This is usually the most contentious aspect of an aggravation claim. For example, if you had mild spinal degeneration but a workplace lifting injury caused severe pain and reduced mobility, Comcare must cover the additional harm caused by work, but not the degenerative condition itself.

## Your rights under an accepted Comcare aggravation claim

It’s important to distinguish between Comcare (or a self-insuring employer) accepting your claim on the basis that it is an ‘aggravation’ of some pre-existing degeneration, as opposed to it being a ‘fresh’ injury.

If you believe it is a ‘fresh’ injury (unrelated to degeneration), you need to dispute such a decision as it can have important legal consequences for you down the track.

If, however, you agree with the description of your injury as an aggravation-type injury, you have the same entitlements as for any other type of injury.

These include:

## Medical treatment expenses

Comcare must pay for 'reasonable and necessary' treatment related to your accepted injury, including:

GP and specialist consultations;

Physiotherapy, chiropractic care or osteopathy, prescription medications, surgery (if required), psychological support (if work-related stress worsened your condition).

## Important

Treatment must be 'medically justified' and linked to the work aggravation.

You may need pre-approval for some more significant treatments (e.g., surgery).

## Incapacity payments (income replacement)

If you cannot work at all or you have reduced capacity, you may receive the following to cover loss of income:

**First 45 weeks:** 100% of your "Normal Weekly Earnings (NWE)"

**After 45 weeks:** 75% of NWE (if still totally incapacitated; otherwise, other reductions will apply).

If you return to work part-time, you may receive top-up payments if your earnings are lower than before you sustained your injury.

You can read more about loss of income payments in our earlier blog, ["Loss of wages in Comcare claims - how are they calculated?"](#)

## Permanent impairment compensation (lump sum payment)

If your work-related aggravation leads to a permanent impairment, you may qualify for lump sum benefits under the Act (certain thresholds apply to accessing permanent impairment benefits).

## Rehabilitation & return-to-work support that Comcare should provide

A Rehabilitation Case Manager to coordinate recovery;

A Return-to-Work Plan with modified duties (if possible);

Retraining or vocational assistance if you can't return to your old job.

## What if Comcare says the aggravation is temporary?

Comcare may initially accept your claim but later argue/determine that the work-related aggravation has resolved, leaving only the pre-existing degeneration.

If they try to cease liability, you can fight back. At this point, seeking advice and assistance from a Comcare lawyer is highly recommended. An experienced lawyer can assist you with the following.

[FREE ADVICE FROM A COMCARE LAWYER: 07 3310 8729](tel:0733108729)

### Getting solid medical evidence

Your doctor (preferably a specialist) should confirm the ongoing need for medical treatment and that your incapacity (either total or partial) is related to the aggravating event, the subject of your compensation claim.

### Lodging a reconsideration request

You have 30 days from receipt of any decision to cease your claim, to challenge Comcare's decision.

Do not ignore this 30-day period (for example, if you are waiting for more medical evidence). If you need more time, ask Comcare (before the expiration of the 30-day period) for an 'extension of time' in which to submit your request for reconsideration.

## Return-to-work rights & suitable employment

Your employer, together with Comcare, must take reasonable steps to get you back to work (in suitable employment). But note, all they are required to do is take 'reasonable' steps to do so.

There will be instances where the employer and Comcare cannot accommodate your return to work. For example, your usual job may be so nuanced and require you to be fully fit to be able to return to it, or it is not reasonably possible for the employer to redeploy you somewhere else within the company.

## Your return-to-work rights

You cannot be forced into a job that worsens your injury.

If no suitable role exists, Comcare (and your employer) are to take reasonable steps to provide rehabilitation/return-to-work options.

If you cannot work at all, you may still receive incapacity payments to cover loss of income if the accepted medical evidence supports a continued causal link between your aggravation injury and your inability to work.

## What if Comcare tries to stop your benefits?

Comcare may attempt to cut off benefits if it believes:

your aggravation has resolved;

you can return to full duties;

you're not cooperating with reasonable requests of you to participate in rehab (return-to-work programs).

## How to dispute an unfair Comcare decision

If you disagree with Comcare's decision, you have three potential legal options to dispute that decision.

### Reconsideration request

You can lodge a [Request for Reconsideration](#) within 30 days from the date you receive the written decision that you are not happy with. A different Comcare officer reviews your reconsideration request. Unfortunately, the vast majority of reconsideration requests (more

than 90%), are not successful. Having an experienced Comcare lawyer can help maximise your chances of success.

## FREE ADVICE FROM A COMCARE LAWYER: 07 3310 8729Administrative Review Tribunal (ART)

If reconsideration fails, you can apply to the ART for it to conduct a review of the decision of Comcare/self-insurer. The ART conducts a completely 'fresh' review of your case, and has wide-ranging powers regarding what decisions it can make regarding your claim.

### Federal Court appeal

If you disagree with the ART ruling, you may appeal to the Federal Court. These appeals can be on matters of 'law' only; that is, you can't ask the Federal Court to reconsider the ART's findings of 'fact' or simply because you don't like the decision.

## Summing up Comcare claims related to aggravation of degenerative conditions

Having a Comcare claim accepted for an aggravation of a degenerative condition means you're entitled to:

medical treatment;

incapacity payments for loss of income;

rehabilitation services;

possible lump sum compensation.

Comcare may initially accept your claim but later try to deny liability. To protect yourself:

keep detailed medical records linking symptoms to work;

challenge unfair decisions via reconsideration or ART application processes;

get proper legal advice from a lawyer experienced in Comcare claims.

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*This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*