



Can you sue your employer after a Comcare claim is accepted?

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If Comcare has accepted your workers' compensation claim, you may be wondering whether you can also sue your employer for negligence. For Australian Government employees and others covered by Comcare, the answer is not always straightforward.

This article explains how Comcare works, what an accepted claim means, and when - if ever - a separate negligence claim against your employer may be possible.

What it means when Comcare accepts your claim

Comcare is the workers' compensation scheme that covers Australian Government employees and some private sector employers who have a license to self-insure under the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

When Comcare accepts your claim, it means:

your injury or illness has been accepted as work-related;

you are entitled to [statutory benefits under the Comcare scheme](#);

liability for your injury has been formally acknowledged.

Acceptance does not automatically mean your employer was negligent. It simply means you had an injury, and that injury (or illness) is work-related.

What benefits are available under Comcare?

Once a claim is accepted, Comcare may pay a range of benefits, including:

- [weekly compensation for lost income](#);

medical, rehabilitation and treatment expenses;

- [compensation for permanent impairment](#), if thresholds are met (this is a lump sum payment).

These benefits are provided on a no-fault basis. You do not need to prove your employer did anything wrong to receive them.

The general rule about suing your employer due to negligence

For most people covered by Comcare, the starting position is that you cannot sue your employer for negligence in relation to the same injury.

This is because the Comcare scheme was designed to provide a range of statutory benefits which were supposed to replace common law damages that an injured worker might otherwise be able to claim against his/her employer. In effect, employees were giving up their right to sue their employer in consideration of being entitled to recover any loss of earnings and costs of medical and other treatment, into the future.

This legal 'trade-off' is a particular feature of the federal workers' compensation scheme.

In a nutshell, an employee covered by Comcare is only entitled to sue their employer if:

they are assessed for 'permanent impairment' at or greater than 10% whole-person-impairment (by reference to the Comcare Guidelines to assessment of Permanent Impairment);

the employee has made a formal 'election' to pursue a civil claim for damages, and forego the statutory lump-sum they would be otherwise entitled to (by having a WPI at or greater than 10%).

Notably, the injured worker is only entitled to sue for 'non-economic loss' type damages, which, in effect, is only what are called 'general damages' (that is, damages for 'pain and suffering and loss of amenities of life')

These limitations are very important to keep in mind when considering whether to sue your employer (if you're under the Comcare Scheme), because, in 99% of cases, the amount that you would receive by way of a lump-sum (if you are assessed at or more than 10%) will be about what you would be able to recover if you sue the employer for 'general damages'.

And, you would have to also go to the trouble and expense (of paying lawyers) to run the civil claim through the court system. This means that, nearly without exception, it is better to simply accept the lump-sum offer, rather than formally elect to take the civil action option. If you're unsure which option to choose, you should seek legal advice immediately.

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Why Comcare is different from state workers' compensation schemes

Comcare operates differently from most state and territory workers' compensation systems (apart from the Northern Territory scheme, which is similar in many respects)

In many state schemes, an injured worker may be able to pursue common law damages if certain preconditions are met. Under Comcare, the right to sue an employer is a lot more limited.

Are there any other options to sue for work injuries if covered by the Comcare Scheme?

There are limited and specific circumstances where legal action outside the Comcare scheme may still be possible.

These may include:

claims against a third party who is not your employer;

claims that do not arise out of employment;

certain intentional acts, depending on the facts.

Each situation turns on its own facts and legal characterisation of the claim.

Claims against third parties

While suing your employer is generally restricted, you may still be able to pursue a negligence claim against a third party.

A third party is someone other than your employer, such as:

a contractor or subcontractor;

a property owner or occupier;

a manufacturer of faulty equipment

another driver who negligently caused your injury.

If a third party's negligence caused or contributed to your injury:

You may be able to bring a separate civil claim;

But if you have an accepted claim with Comcare (arising from the same circumstances), then Comcare will have rights to recover benefits they paid to you from any settlement or judgment you receive (essentially reimbursing Comcare).

But probably more importantly, the accepted claim with Comcare will cease as soon as any (related) third-party civil claim is finished. This is a very important consideration for any workers in receipt of Comcare benefits who are considering bringing a separate civil claim (against any other non-employer entity).

These claims are complex and require careful coordination, and getting proper legal advice from an experienced Comcare lawyer is critical.

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What happens if your condition worsens over time?

An accepted Comcare claim does not prevent you from:

seeking ongoing treatment;

claiming additional benefits if your condition deteriorates;

applying for permanent impairment (lump sum) compensation at a later date.

The Comcare system is designed to respond to changes in your medical condition over time.

Time limits and procedural issues

Strict time limits apply to different types of claims.

For example:

Comcare benefit reviews have set review and appeal timeframes;

civil claims against third parties are subject to limitation periods (time limits to bring a claim);

discrimination or Fair Work claims often have short filing deadlines.

Missing a deadline can significantly affect your rights.

When legal advice is especially important

Legal advice is important if:

you are considering action beyond an accepted claim for Comcare benefits;

a third party may be responsible for your injury;

your employer disputes ongoing liability;

your condition is permanent or worsening.

Early advice can help you avoid steps that may unintentionally limit your options.

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Frequently asked questions

Does an accepted Comcare claim mean my employer admitted fault?

No. Comcare operates on a no-fault basis. Acceptance means your injury is work-related, not that your employer was negligent and caused your injury.

Can I receive Comcare benefits and sue at the same time?

The short answer is 'yes', but to consider doing this is extremely complicated and legal advice from an experienced Comcare lawyer is critical to determine if doing so is in your best interests.

What if my employer's conduct involved very serious negligence?

In terms of a civil claim, the situation remains as noted above. That is, the 'seriousness' of the negligent conduct doesn't mean you are entitled to more/additional damages than for a 'non-serious conduct' situation.

Should I get legal advice even if my claim is accepted?

For claims where the injury resolves, it's not usually necessary to seek advice from an experienced Comcare lawyer. But the 'golden rule' is that if you are unsure about anything to do with your claim or your rights to compensation, then it's best to seek legal advice about what your options are.

Get help from a Comcare lawyer

Having a Comcare claim accepted provides important financial and medical support, but it also limits/complicates the ability to sue an employer or third party for negligence. While there are exceptions and alternative legal pathways, they are narrow, complex and fact-specific. Understanding how Comcare interacts with negligence and other claims is essential to protecting your long-term interests.

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.