**[2015] AATA 267**

Division **GENERAL ADMINISTRATIVE DIVISION**

File Number **2014/4910**

Re **Bureau of Meteorology**

 APPLICANT

And **Comcare**

 RESPONDENT

And **Elizabeth Boulton**

 OTHER PARTY

**DECISION**

Tribunal **Deputy President S A Forgie**

Date **28 April** **2015**

Place **Melbourne**

The Tribunal decides to:

1. set aside the reviewable decision made by the respondent on 23 July 2014 that the other party was entitled to compensation for an aggravation of major depressive disorder sustained on 15 November 2011; and

1. substitute a decision that compensation is not payable to the other party under the *Safety, Rehabilitation and Compensation Act 1988* as she did not make a claim in accordance with s 54 in respect of any condition for an aggravation of major depressive disorder sustained on 15 November 2011.

…[sgd] S A Forgie.…

**Deputy President**

**CATCHWORDS**

***COMPENSATION*** *– entitlement to compensation – claim – approved form – whether a claim made – whether substantial compliance – medical certificate – whether lodged – claim not taken to have been made – decision set aside*

**LEGISLATION**

*Acts Interpretation Act 1901; sections 2C, 25C*

*Administrative Appeals Tribunal 1975; sections 37, 43*

*Administrative Decisions (Judicial Review) Act 1977; section 11*

*Bankruptcy Act 1966; section 64ZF*

*Conciliation and Arbitration Act; section 140*

*Insurance Act 1973; section 130*

*Meteorology Act 1955; section 5*

*Military Rehabilitation and Compensation Act 2004*; *section 319*

*Migration Act 1958; sections 347, 348*

*Public Service Act 1999; section 7, 65*

*Safety, Rehabilitation and Compensation Act 1988; sections 4, 5, 5A, 6, 6A, 7, 14, 16, 20, 38, 53, 54, 59, 60, 61, 62, 64*

*Shipping Registration Act 1981; section 3*

*Transfer of Land Act 1890; section 3*

*Migration Regulations 1994; regulation 2.07, 1128CA of Schedule 1*

*Safety, Rehabilitation and Compensation Regulations 2002; regulation 16, Item 4 of Schedule 4*

**CASES**

*Abrahams v Comcare* [2006] FCA 1829; (2006) 93 ALD 147

*Bal v Minister for Immigration & Multicultural Affairs* [2002] FCAFC 189; (2002) 189 ALR 566; 69 ALD 634

*Buhr v Comcare* [2007] FCA 575; (2007) 45 AAR 270

*Canute v Comcare* [2006] HCA 47; (2006) 226 CLR 535; 229 ALR 445; 80 ALJR 1578; 91 ALD 552

*Collector of Customs (New South Wales) v Brian Lawlor Automotive Pty Ltd* [1979] FCA 21; (1979) 24 ALR 307; 41 FLR 338; 2 ALD 1

*Crowley v Templeton* [1914] HCA 6; (1914) 17 CLR 457

*Deputy Commissioner of Patents v Board of Control of Michigan Technological University* [1979] FCA 84; (1979) 43 FLR 9; 28 ALR 551; 2 ALD 711

*Irwin v Military Rehabilitation and Compensation Commission* [2009] FCAFC 33; (2009) 174 FCR 574; 107 ALD 253

*Lees v Comcare* [1999] FCA 753; (1999) 56 ALD 84; 29 AAR 350

*Minister for Immigration and Multicultural Affairs v Modi* [2001] FCA 1656; (2001) 116 FCR 496; 67 ALD 330

*Pearson v Richardson* [2012] TASSC 71

*Pradabsuk v Minister for Immigration and Multicultural and Indigenous Affairs* [2006] FCAFC 66; (2006) 150 FCR 584; 231 ALR 398

*Re Buhr and Comcare* [2006] AATA 93

*Re Cavanagh and Comcare* [2008] AATA 553; (2008) 106 ALD 143

*Re Durham and TNT Australia Pty Ltd* [2011] AATA 802; (2011) 124 ALD 136

*Riley v Australian Builders Labourers Federation* (1963) 4 FLR 380

*Sellick v Australian Postal Corporation* [2009] FCAFC 146; (2009) 113 ALD 58; 50 AAR 505

*Shahabuddin v Minister for Immigration and Multicultural Affairs* [2001] FCA 273

*Szabo v Comcare* [2012] FCAFC 129; (2012) 58 AAR 152

*SZJDS v Minister for Immigration and Citizenship* [2012] FCAFC 27; (2012) 201 FCR 1; 126 ALD 78

*Telstra Corporation Ltd v Kotevski* [2013] FCA 27; (2013) 209 FCR 558; 299 ALR 346; 59 AAR 143; 133 ALD 339

**REASONS FOR DECISION**

1. Ms Elizabeth Boulton was an employee of the Bureau of Meteorology (Bureau) from 10 August 2009 to 27 June 2012.[[1]](#footnote-1) On 17 July 2013, Ms Boulton lodged a claim with Comcare under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) seeking compensation for the conditions of Depression, Anxiety and Post Traumatic Stress Disorder (PTSD). She first noticed that she was suffering from these conditions on 1 September 2009 and first sought treatment for them on 23 February 2010.[[2]](#footnote-2) On 24 January 2014, a delegate of Comcare advised her that he had disallowed her claim for two conditions: unspecified personality disorder and major depressive disorder, recurrent episode.[[3]](#footnote-3) Ms Boulton asked Comcare to reconsider its decision. It did so and, on 23 July 2014, decided to revoke the determination dated 24 January 2014 and substituted a determination that Ms Boulton was entitled to compensation for an aggravation of major depressive disorder sustained on 15 November 2011.[[4]](#footnote-4)

2. The Bureau has lodged an application for review of Comcare’s decision. As a preliminary issue, it has raised the question whether Comcare had power to make its decision dated 23 July 2014 in circumstances in which it appeared that Ms Boulton had not lodged a claim for compensation in respect of any condition sustained on 15 November 2011. I have decided that Ms Boulton has not lodged a claim in respect of that condition and she has not lodged any document that can be regarded as a claim on the basis that it substantially complies with the requirements of s 54 of the SRC Act. As Ms Boulton has not made a claim, the effect of s 54(1) of the SRC Act is that compensation is not payable to her under that legislation. Therefore, I have decided to set aside Comcare’s reviewable decision dated 23 July 2014 and substitute a decision that compensation is not payable to Ms Boulton.

**OUTLINE OF THE SUBMISSIONS**

3. On behalf of the Bureau, Ms Orr SC of counsel submitted that Comcare had erred in determining that compensation was payable to Ms Boulton in circumstances in which she had not lodged a claim for compensation. Lodgement of that claim, she submitted, was a precondition for payment. Section 54(2) of the SRC Act provides that a claim is made by giving a written claim in accordance with the approved form together with a medical certificate also in the approved form. The only claim that had been made by Ms Boulton had been a claim for depression, anxiety and PTSD sustained by 1 September 2009 as result of doing two jobs at once, being reassigned from an executive role to an administrative role, bullying and victimisation about having submitted a complaint regarding the bullying. That claim had been determined and was at an end. Ms Boulton had not, Ms Orr submitted, made a claim for aggravation of a major depressive disorder sustained on 15 November 2011. No medical certificate had been provided in respect of her condition.

4. Comcare has submitted that it did have that power on one or other of two bases. The first is that Ms Boulton had claimed compensation on 6 July 2013. Her email of 30 July 2013 was an expansion of her claim. On behalf of Ms Boulton, Mr Wilson made a submission to the same effect. The second basis put forward by Mr Lenczner is that there were two claims with the second made informally in the email. On behalf of Comcare, Mr Lenczner of counsel relied on the judgment of Edmonds J in *Buhr v Comcare*.[[5]](#footnote-5) In support of his further submission that Comcare was entitled to interpret Ms Boulton’s claim broadly, Mr Lenczner relied on the decision of the Tribunal in *Re Durham and TNT Australia Pty Ltd*[[6]](#footnote-6) and a judgment of the Federal Court in *Telstra Corporation Ltd v Kotevski*.[[7]](#footnote-7)

**CHRONOLOGY OF EVENTS**

5. In this section of my reasons, I will set out the chronology of events that underlie the issue I must decide:

| **No.** | **Date** | **Event** |
| --- | --- | --- |
| 1. | 10 August 2009 to 27 June 2012 | Ms Boulton employed by Bureau under a number of contracts. The final contract ceased on 27 June 2012. |
| 2. | 6 July 2013 | Ms Boulton lodged a claim for workers’ compensation in a form approved by Comcare in respect of Depression, Anxiety and Post Traumatic Distress Disorder (PTSD).[[8]](#footnote-8) She had first noticed that she was ill on 1 September 2009 and first sought treatment on 23 February 2010. Ms Boulton stated that she had sought counselling for her condition. In an attachment to Question 14, Ms Boulton set out details of the counselling she had received from 30 June 2009 until 19 July 2011 including a weekly course on managing depression and PTSD that she had attended in 2007.She indicated that she had previously suffered a similar illness and described it as “*Limited Post Traumatic Stress Disorder related to work place injury Nov 2001 and active service 1RAQ 25 Apr – 30 Nov 2004.*” She had previously received treatment “*Post Sudan & Iraq (2002 + 2005)*”.In answer to questions regarding what she was doing when she became ill, actions events or exposures that caused her to become ill and what actually made her ill, Ms Boulton wrote:“*Working as International Liaison Officer and Admin Officer for Pacific Climate Change Science Project. International travel; meetings; officework; preparing documents; conducting liaison; conducting administration.*”“*Repeated bullying; doing two jobs at once. Being yelled at; demeaned; excluded. (document 11, 12)*”“*- Two jobs at once; being reassigned from Exec. Role to Admin role.* *- Bullying by …* [Bureau staff member].*- Victimisation after submission complaint.**- (See Statement). (document 11+12).*”[[9]](#footnote-9)Ms Boulton attached a statement setting out further details. She included a Table summarising approximately 45 incidents in the period from 10 August 2009 until two undated events occurring on or after 3 March 2013.[[10]](#footnote-10) |
| 3. | 30 July 2013 | Ms Boulton wrote an email to Comcare expressing her gratitude that the various stressful events she had described (bullying, sexual harassment and victimisation upon reporting the incidents) could be considered holistically. She ruminated on the reasons that might have made her a “*target for more bullying and harassment*” and particularly so when her work performance had been very high and she had achieved some significant outcomes for the Bureau. Ms Boulton then wrote:“*I attach the statement I submitted to the HRC about subsequent events. Also, I have PDFs of various medical documents which I may need to send over various emails.**I do have more documentary evidence to support the HRC complaint if that is needed, (nearly 200 documents). I won’t send at this stage unless you advise. I’m assuming the main documents you want are the medical records.**Thank you again for explaining that Comcare focus upon the injury; HRC upon the human rights aspect, I didn’t understand that properly.*”[[11]](#footnote-11)The Complaint Ms Boulton made to the Human Rights Commission (HRC) was about her having been discriminated against on the basis of her sex and marital status, having been sexually harassed and having been victimised after making equity complaints. She said that this occurred from 2009 until 5 March 2012 at the Bureau’s Docklands office and from 6 March to 27 June 2012 at its Canberra office.[[12]](#footnote-12)In response to a section headed “*What/who/when*”, Ms Boulton set out details of a number of incidents or events that underpinned her complaints. In summary and without specifying details of Ms Boulton’s complaints, they may be categorised as relating to:(1) sexual harassment occurring between 12 March and 23 September 2010;(2) victimisation on 9 February 2012;(3) sexual discrimination in November 2010;(4) discrimination based on marital status and subsequent sexual harassment occurring in a number of incidents detailed in the Complaint. They include incidents described as occurring in February 2010, March 2010, April/May 2010, August 2010, September 2010 (two), December 2010, January 2011, October 2011, November/December 2011, February 2012, March 2012, May 2012 and September 2012.[[13]](#footnote-13)In response to Part C of the Complaint to the HRC, Ms Boulton said that she had suffered depression episodes and anxiety as well as working reduced hours in the period up to September 2010. She said that from June 2011 to February 2012, she suffered major depression in December 2011 and severe anxiety. With regard to matters occurring after February 2012, she said that she had suffered major depression, anxiety and PTSD, had taken medical leave from her PhD studies from mid September 2012 to 24 December 2012 and another month’s leave from 25 December 2012 to 20 January 2013, had to alter her PhD topic because she was now no longer able to focus it on the Bureau and her career in Climate Change science policy was no longer feasible.[[14]](#footnote-14)Apart from systemic changes she wanted to occur in the Bureau, Ms Boulton sought compensation for time lost from her work and her PhD course due to severe depression, for psychological damage inflicted on the quality of her life and her ability to progress with her career and for the interruption to her studies.[[15]](#footnote-15) |
| 4. | 7 August 2013 | Comcare wrote to the Bureau asking it to provide a statement of facts setting out specific details and comments regarding Ms Boulton’s claim for compensation. It identified Ms Boulton and then set out the following details:“*Claim reference: 1190907/1Claimed condition: depression, anxiety, post traumatic stress disorderDate of injury: 1 September 2009*”[[16]](#footnote-16)Enclosed in Comcare’s letter was “*… an additional statement that she has provided in relation to her claim.*”[[17]](#footnote-17) It advised her that its statement of facts should include:“*· A chronological timeline (exact dates where possible) relating to any events, issues, complaints that led up to Ms Boulton’s condition.** *A list of any policies and procedures, whether formal or informal, used by the agency in relation to the information detailed in the timeline above.*
* *Any other employment or non-employment related factors which may have impacted on Ms Boulton’s condition? Such as outside employment, any declaration of previous conditions in their pre-employment records.*”[[18]](#footnote-18)
 |
| 5. | 7 August 2013 | Comcare wrote to Ms Boulton’s medical practitioners with regard to her claim. In each letter, it set out the Claim Reference, claimed condition and date of injury as it had in its letter to the Bureau.[[19]](#footnote-19) |
| 6. | 30 August 2013 | The Bureau provided a Statement of Facts citing Comcare’s Claim Reference No. 1190907/1. It set out background material relating to the staffing of the Pacific Climate Change Science Program (PCCSP), which is a joint scientific project between the Bureau and CSIRO and the working arrangements in that group. Included in the letter was a table setting out various dates from 10 August 2009 to March 2010 and addressing, the Bureau said, “*… the key points that appear to form the basis of Ms Boulton’s claim for compensation.*”[[20]](#footnote-20) The Bureau also attached copies of various policies and protocols relevant to her employment and noted that it had first become aware that she was suffering from PTSD and Depression through a medical certificate dated February 2010. |
| 7. | Undated | Ms Boulton responded to the Bureau’s Statement of Facts regarding Claim 1190907/1 by setting out a table corresponding with the Bureau’s table and commenting upon each. She covered the same period.[[21]](#footnote-21) |
| 8. | 28 October 2013 | Ms Boulton prepared a document dated 28 October and said to be her statement and a “*Response to BOM statement 23 August 2013 – (DIR 13 0691; 75/1475)*”. Given the date and the content, I find that the document is Ms Boulton’s statement in response to a statement made by the Bureau to the HRC. My finding is confirmed by Ms Boulton’s handwritten note on the first page of the document. It is written to a Comcare officer and reads:“*here are additional docs sent to HRC that relate to my Comcare Claim: 1190907/2 …*”[[22]](#footnote-22) |
| 9. | 29 October 2013 | Comcare wrote to Ms Boulton with the heading:“*Claim reference: 1190907/1Claimed condition: depression, anxiety, post traumatic stress disorderDate of injury: 23 February 2010*”[[23]](#footnote-23)It advised her that liability had been accepted for her Generalised Anxiety Disorder under s 14 of the SRC Act for a closed period from 23 February 2010 to 11 March 2010. Liability was also accepted for the periods she was absent from work in this closed period as a result of her injury as well as medical treatment in that same period.The letter explained that the condition had been described on the basis of the International Classification of Diseases and Injuries. That meant that the wording of her accepted condition might differ from the wording she had provided on her claim form. |
| 10. | 7 November 2013 | Comcare wrote to the Bureau with the following heading:“*Claim reference: 1190907/2Claimed condition: depression/PTSD Date of injury: 5 July 2012*”[[24]](#footnote-24)The letter asked the Bureau for a Statement of Facts providing specific details and comments regarding Ms Boulton’s claim for compensation. An additional statement provided by Ms Boulton was said to be enclosed but a copy does not appear in the T documents. A copy of the claim for compensation does not appear in the T documents. |
| 11. | 22 November 2013 | Comcare wrote to Dr James Hundertmark whom it had asked to see Ms Boulton. The letter was headed:“*Claim reference: 1190907/2Claimed condition: depression/PTSD Date of injury: 5 July 2012*[[25]](#footnote-25)In a Case Summary attached to its letter, Comcare set out the background including:“*Ms Boulton has an existing compensation claim in 1190907/1 in which compensation was accepted for a closed period from 23 February 2010 up to and including 11 March 2010 (see attached determination).**A new claim has been lodged in relation to subsequent treatment obtained in relation to a psychological condition on 10 September 2010.**Ms Boulton has indicated on the compensation claim form that she has had limited post traumatic stress disorder related to a workplace injury in November 2001 and active service in 1RAR from 23 April 2004 – 30 November and post Sudan and Iraq (2002 + 2005).**Ms Boulton has obtained spasmodic treatment over a period of years …*”[[26]](#footnote-26) |
| 12. | 29 November 2013 | The Bureau responded to Comcare’s request for a Statement of Facts. It noted that the claimed date of injury was subsequent to her ceasing employment with it.The Bureau went on to note that Ms Boulton had lodged a complaint with the HRC alleging that she had suffered sexual harassment, sexual discrimination and victimisation. In response, the Bureau had engaged an external Human Resource Consultant to investigate the specific claims she had made. It had then responded to the HRC and attached a copy of its response as it considered it highly relevant to Comcare “*As the AHRC complaint was based on the same alleged behaviours as the compensation matter …*”.[[27]](#footnote-27) |
| 13. | 24 January 2014 | Comcare wrote to Ms Boulton in relation to:“*Claim reference: 1190907/2Claimed condition: Depression, Anxiety, Post-Traumatic Stress Disorder (PTSD)Date of injury: 10 September 2010*”[[28]](#footnote-28)Comcare disallowed Ms Boulton’s claim under s 14 of the SRC Act describing the conditions as unspecified personality disorder and major depressive disorder, recurrent episode. Attached is a statement of reasons concluding with the statement that the delegate was not satisfied that she had sustained a psychological injury that was significantly contributed to by her employment.[[29]](#footnote-29)In the Statement of Reasons attached to the letter, the delegate noted that Comcare had notified the Bureau of Ms Boulton’s “*… second claim based on your* Claim for Workers’ Compensation *form dated 29 October 2013 on 7 November 2013.*”The Statement went on to describe the claim she had submitted in respect of depression, anxiety and PTSD. In her claim form, it said, she had described her condition as developing as a result of repeated bullying, doing two jobs at once, being yelled at, demeaned and excluded. She first noticed her condition on 1 September 2009 and first sought medical treatment for it on 23 February 2010.The Statement then noted that:“*In this regard, however, I note you already have an accepted claim based on this claim form for the closed period from 23 February 2010 to 11 March 2010, with date of injury deemed 23 February 2010 (claim reference 1190907/1). It is accepted that this second claim is based on work incidents which occurred after 11 March 2010.*”[[30]](#footnote-30)Had he been satisfied that Ms Boulton had sustained a psychological injury which had been significantly contributed to by her employment, which he was not, the delegate would have found that she first sought treatment for it on 11 November 2011. That would have been deemed to have been the date of injury. It could not have been 1 September 2009 as that date related to the set of circumstances, the delegate noted, that were dealt with under her earlier claim.[[31]](#footnote-31) |
| 14. | 26 March 2014 | Ms Boulton asked for reconsideration of the determination made in Claim No. 1190907/2[[32]](#footnote-32) |
| 15. | 4 April 2014 | In relation to Comcare’s correspondence dated 28 March 2014 relating to claim No. 1190907/02 and Ms Boulton’s request for reconsideration, the Bureau advised that it did not wish to submit any further evidence or reports in relation to the claim.[[33]](#footnote-33) |
| 16. | 23 July 2014 | Comcare revoked the determination dated 24 January 2014 and substituted a determination that she was entitled to compensation for an aggravation of a major depressive disorder sustained on 15 November 2011.[[34]](#footnote-34)The basis for coming to that decision was the Review Officer’s finding that she had suffered an injury due to her perceptions of various events that had occurred in the workplace. She did not need to be satisfied that those perceptions were reasonable and she made no findings as to whether Ms Boulton was actually bullied, sexually harassed or mistreated in any way or whether it was reasonable for her to perceive that she had been mistreated.[[35]](#footnote-35) |

**LEGISLATIVE FRAMEWORK**

***Entitlement to compensation***

1. **Liability to pay compensation**

6. Subject to the various qualifications set out in Part II of the SRC Act:

“*… Comcare is liable to pay compensation in accordance with this Act in respect of an injury suffered by an employee if the injury results in death, incapacity for work, or impairment.*”[[36]](#footnote-36)

It follows that Comcare is only liable to pay compensation in accordance with the SRC Act if two criteria are satisfied. The first is that there is “*an injury suffered by an employee*”. The second is that the injury results in death, incapacity for work or impairment.

7. The nature of the compensation that Comcare is liable to pay in respect of that injury is provided for in each of the five Divisions of which Part II is comprised. Division 1 provides for compensation for loss of, or damage to, property and for compensation in respect of the cost of medical treatment. Division 2 provides for compensation for injuries resulting in death and Division 3 where they result in incapacity for work. Compensation payable for injuries resulting in impairment is provided for in Division 4 and Division 5 provides for compensation where, as a result of an injury, an employee obtains household services.

**B. “*an injury suffered by an employee*”**

8. The word “*employee*” is defined in s 5 of the SRC Act. There is no question that Ms Boulton was an employee and no need to explore that definition further.

9. An “*injury*” is defined in s 5A(1) to mean:

“*(a) a disease suffered by an employee; or*

*(b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee’s employment; or*

*(c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee’s employment), that is an aggravation that arose out of, or in the course of, that employment;*

*but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee’s employment.*”

The expression “*reasonable administrative action*” is expanded upon in s 5A(2).

10. Section 6 is not intended to limit the circumstances in which an injury to an employee may be treated as having arisen out of, or in the course of, his or her employment but it does set out specific circumstances in which it will be treated as having done so. Section 6A makes specific and extended provision on this issue for members of the Defence Force and certain other persons.

11. The word “*disease*” is given its meaning by s 5B:[[37]](#footnote-37)

“*(1) In this Act:*

**Disease** *means:*

*(a) an ailment suffered by an employee; or*

*(b) an aggravation of such an ailment;*

*that was contributed to, to a significant degree, by the employee’s employment by the Commonwealth or a licensee.*

*(2) In determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee’s employment by the Commonwealth or a licensee, the following matters may be taken into account:*

*(a) the duration of the employment;*

*(b) the nature of, and particular tasks involved in, the employment;*

*(c) any predisposition of the employee to the ailment or aggravation;*

*(d) any activities of the employee not related to the employment;*

*(e) any other matters affecting the employee’s health.*

*This subsection does not limit the matters that may be taken into account.*”

*(3) In this Act:*

**significant degree** *means a degree that is substantially more than material.*”

12. Section 7 sets out certain circumstances in which, unless the contrary is established, employment will be taken to have contributed, to a significant degree, to the contraction of the disease.

***Procedural steps that must be taken before any entitlement arises***

13. Part V of the SRC Act requires an employee to take certain steps before Comcare’s liability arises. Indeed, s 53(1) provides that:

“*This Act does not apply in relation to an injury to an employee unless notice in writing of the injury is given to the relevant authority:*

*(a) as soon as practicable after the employee becomes aware of the injury; or*

*(b) if the employee dies without having become so aware or before it is practicable to serve such a notice – as soon as practicable after the employee’s death.*”

The “*relevant authority*” in relation to an employee is Comcare if the employee is not employed by a licensee or the licensee if he or she is.[[38]](#footnote-38) The “*relevant authority*” in this case is Comcare because the Bureau is not a licensee under the SRC Act.[[39]](#footnote-39) A “*licensee*” is a Commonwealth authority that is the holder of a licence in force under Part VIII of the SRC Act.[[40]](#footnote-40) The Bureau is not a Commonwealth authority as it is not a body corporate established under an enactment.[[41]](#footnote-41) Therefore, the relevant authority in this context is Comcare.

14. Section 54(1) of the SRC Act provides:

“*Compensation is not payable to a person under this Act unless a claim for compensation is made by or on behalf of the person under this section.*”

 The way in which a claim is made is the subject of s 54(2):

“*A claim shall be made by giving the relevant authority:*

*(a) a written claim in accordance with the form approved by Comcare for the purposes of this paragraph; and*

*(b) except where the claim is for compensation under section 16 or 17 – a certificate by a legally qualified medical practitioner in accordance with the form approved by Comcare for the purposes of this paragraph.*”[[42]](#footnote-42)

15. Section 54(5) provides that:

“*Strict compliance with an approved form referred to in subsection (2) is not required and substantial compliance is sufficient.*”

The certificate required under s 54(2) is a different matter:

“*Where a written claim, other than a claim for compensation under section 16 or 17, is given to a relevant authority under paragraph (2)(a) and the claim is not accompanied by a certificate of the kind referred to in paragraph (2)(b), the claim shall be taken not to have been made until such a certificate is given to that authority.*”[[43]](#footnote-43)

***Processing a claim***

16. Where a claim is given to Comcare, it shall cause a copy of the claim to be given to, in a case such as this, the principal officer of the Bureau.[[44]](#footnote-44) On being requested, Comcare shall:

“*(a) on request by a claimant – give to the claimant any document held by the authority that relates to the claimant’s claim; or*

*(b) on request by the Commonwealth in respect of a claim affecting the Commonwealth or a Commonwealth authority – give to the Commonwealth any document held by the relevant authority that relates to the claim; or*

*(c) …*”[[45]](#footnote-45)

***Determining a claim***

17. The SRC Act contemplates that Comcare will make a decision or determination regarding each type of compensation rather than a single determination under s 14 in respect of an injury suffered by an employee and covering all forms of compensation payable under the SRC Act. That follows in part from the fact that the word “*determination*” is defined in s 60(1) to include a determination, decision or requirement under the provisions it lists. It also follows in part from the separate references in s 61 to determinations. Section 61(1A) requires the determining authority[[46]](#footnote-46) to consider and determine each claim for compensation under s 14 within the period prescribed by the regulations.[[47]](#footnote-47) At the same time, s 61(2) recognises that a determination may be made under s 16. Section 61(1) requires the determining authority to give a claimant written notice of the terms of the determination he or she has made together with reasons for it and a notice of the claimant’s entitlement to have it reviewed.

***Reconsidering a determination and reviewing the decision made on reconsideration***

18. A determination may be reconsidered under s 62 and the decision affirmed, revoked or varied. The decision made under s 62 is a reviewable decision.[[48]](#footnote-48) The claimant or, should the decision affect the Commonwealth, a Commonwealth authority or licensee, the Commonwealth or Commonwealth authority or licensee, may apply to the Tribunal for review of the reviewable decision.[[49]](#footnote-49)

**CONSIDERATION**

***What is “substantial compliance”*?**

**A. A selection of authorities**

19. In providing that strict compliance with an approved form is not required and substantial compliance is sufficient, s 54(5) of the SRC Act is mirroring a provision to similar effect in the *Acts Interpretation Act 1901*(AI Act).[[50]](#footnote-50) The expression has been considered in those contexts but it may also be used in contexts other than legislative. I will give examples of both for the practical application of the expression will differ according to context.

20. In *Riley v Australian Builders Labourers Federation*[[51]](#footnote-51)(*Riley*), the Commonwealth Industrial Court considered whether a rule of an organisation was valid under s 140(1) of the *Conciliation and Arbitration Act 1904* (CA Act). Section 140(1) provided that a rule of an organisation shall not impose on its members conditions, obligations or restrictions which, having regard to the objects of the CA Act and the purposes of the registration of organisations under it were oppressive, unreasonable or unjust. The rule under consideration provided, in part, for special meetings. It set out those upon whose requisition they could be called by the secretary and required notice to be given of the time and place of the meeting and its agenda and specified the ways in which notice could be given. The rule also provided:

“*… Every meeting shall be deemed to be valid notwithstanding any informality in the notice provided that the substance is fairly given and notwithstanding that not every job delegate is notified or that not all members concerned are notified provided there is substantial compliance with this rule.*”[[52]](#footnote-52)

21. Among other points, it was argued before the Industrial Court that the rule requiring “*substantial compliance*” was so vague and uncertain as to cause the final sentence of the rule to contravene s 140(1). The Full Court did not accept this argument saying:

“ *It is true that circumstances can arise in which there may be room for genuine differences of opinion as to whether in a particular case there has been a ‘substantial compliance’ with the rule and a final determination might only be possible by resort to this Court under s 141.*

 *For an executive committee which bona fide desires to comply with the rule, it presents no difficulty. If by the various means open to it it genuinely seeks to reach all members it will be free from criticism even if, by some mischance, the notification fails to reach a substantial number of members. The committee itself has no power to determine conclusively whether there has been ‘a substantial compliance’. That, as we have already said, is ultimately in a proper case a matter for the court. The test of substantial compliance is one which can be applied to particular circumstances and we think it is a reasonable test to which no objection can properly be taken under s. 140.*”[[53]](#footnote-53)

22. The Full Court went on to consider the situation in which some members were unable to vote at a special meeting because they were not given notice of the meeting. The Court decided that, provided there had been substantial compliance with the rules, the meeting should not be invalidated because some members had not been given notice and so had failed to vote. Validity, or invalidity, of a special meeting was the focus of the Court. It is clear from its conclusion that substantial compliance would require that notice be given to the knowledge of substantially all members. If notice were not given to substantially all and were designed to give notice only to certain members that would not, in the Court’s view, have led to a good and valid meeting.[[54]](#footnote-54)

23. The High Court’s judgment in *Crowley v Templeton*[[55]](#footnote-55) illustrates a different context in which substantial compliance has been considered. That was the context of the *Transfer of Land Act 1890* (Land Act), which provided for the creation of estates and interests and the manner in which they would be evidenced. It provided that, when forms it provided in a Schedule to the legislation were followed and registered in relation to a transaction, and not otherwise, certain legal consequences would follow according to the nature of the transaction concerned. Section 3 of the Land Act provided that all rules of law inconsistent with that outcome were inapplicable.

24. Section 89 provided that “*the proprietor of land or of a lease mortgage or charge or of any estate right or interest therein respectively may transfer the same by a transfer in one of the forms in the Sixth Schedule hereto ...*”. Griffith CJ, with whom Barton J agreed, examined in detail the variations between the document presented for registration to the Registrar of Titles and the form in the Ninth Schedule.

25. Isaacs and Gavan Duffy JJ explained that there is a distinction between the substance of the transaction or bargain and the form in which the transaction is embodied. The former, their Honours said, was left to the parties but the form in which the transaction is embodied is not. The form was “*… insisted on by the legislature as one of the conditions of statutory operation.*” Of the form, their Honours said:

 “ *Slavish adherence to the forms is not demanded. Technical and immaterial departures from them do not deprive the dealing of efficacy. Substantial compliance is sufficient. But a document offered for registration must show at least substantial compliance on its face. The Act requires it to be in writing, and the writing does not comply with the requirements of the Statute unless those it affects or who are to act upon it, including the Registrar of Titles, whose duty it is to register it, can see from the document itself, when fairly read, that it is an instrument made in pursuance of the Act. Any other rule would introduce endless confusion and risk.*”[[56]](#footnote-56)

 They reviewed the instrument with the form set out in the Schedule and found the variations to be of substance so that the Registrar had been correct in refusing to register it.

26. Griffith CJ came to the same conclusion saying:

 “ *In my opinion the work of the Registrar is intended to be to a great extent, I will not say mechanical, but automatic. The instruments which the Registrar is to be called upon to register are to be such as not to involve difficult questions of law or interpretation of documents, except so far as to record bargains made by the parties which they have a right to make. But it was intended that the document sought to be registered should state distinctly what the parties mean. Having regard to all these matters together, I think the Registrar was justified in refusing to register this document … because all the variations together amount to a variation in matter of substance. Although perhaps one, or two, or three of them might be trivial, yet if the document as a whole departs so widely as this does from the only form authorized, the variation is one in matter of substance. I think, therefore, that this document is one which the Court should not order to be registered*.”[[57]](#footnote-57)

27. In this passage, Griffith CJ looked to the task of the Registrar. He had previously looked at the purpose of registration as did Isaacs and Gavan Duffy JJ. The Full Court of the Federal Court took a similar approach in *Minister for Immigration and Multicultural Affairs v Modi*.[[58]](#footnote-58) A delegate of the Minister had refused to give Mr Modi a further Student (Temporary) (Class TU) subclass 560 visa because he had “*flouted*” the condition which related to course requirements and which attached to his previous visa. The circumstances of the case determined the decision-maker’s statutory duty in the circumstances and there is no rigid test.[[59]](#footnote-59)

28. A similar approach has been taken in more recent cases considering, for example, the provisions of the Migration Act. I will begin with *Shahabuddin v Minister for Immigration and Multicultural Affairs*.[[60]](#footnote-60) The Refugee Review Tribunal (RRT) had affirmed the Minister’s decision not to grant a protection visa to Mr Shahabuddin. Mr Shahabuddin had only partially completed an application form for refugee status. The question for decision by Katz J was whether substantial compliance requires a response to every question on the application form. Mr Shahabuddin submitted that it does but the Minister submitted that Katz J should ask:

“…*whether a fair reading of the information which Mr Shahabuddin included in the space provided on the form for answering the first of the six questions indicates that he was making a claim that he feared being persecuted for reasons of political opinion if he should return to Bangladesh. …*”[[61]](#footnote-61)

29. Katz J accepted the Minister’s submission finding that this was the question he should ask himself. By way of explanation, he said:

“… *To require a non-citizen not only to set out on the application form his or her claims that he or she is a refugee, but also specifically to answer each of the six questions, might well impose a burden on non-citizens in the latter category so heavy that many of them will be unable to shoulder it. It was a consideration of that sort which led RD Nicholson J in* Wu v Minister for Immigration & Ethnic Affairs *(1996) 64 FCR 245 at 279 to accept that there was room for the application of the substantial compliance principle in relation to the manner in which a protection visa application form was completed; and see also* Minister for Immigration & Multicultural Affairs v A *[1999] FCA 1679; (1999) 91 FCR 435 at 445, [43] (Merkel J). That consideration should, however, not only impact on the question whether the principle should be applied at all, but also on the question of how it should operate when applied.*”[[62]](#footnote-62)

30. Katz J went on to conclude that, on a fair reading of Mr Shahabuddin’s application he had answered the questions in a way that indicated that he was making a claim that he feared persecution for reasons of his political opinion were he to return to Bangladesh. His Honour read those answers with an earlier statement that Mr Shahabuddin was seeking protection in Australia so that he did not have to go back to Bangladesh and also in light of the background knowledge that the Minister’s delegates would have had regarding the political events to which he referred in his application.

31. The case of *Bal v Minister for Immigration and Multicultural Affairs*[[63]](#footnote-63)concerned the operation of r 2.07(3) of the *Migration Regulations 1994* (Migration Regulations). The regulation required an applicant to complete an approved form in accordance with any directions on it and the approved form required an applicant to answer all questions on it. It was accepted that the doctrine of substantial compliance was applicable in respect of the act of completing the form.[[64]](#footnote-64) The Full Court:

“42 *In sum, Mr Bal**made it clear that he claimed to satisfy the Convention definition of a refugee on the basis that he had a well-founded fear of persecution at the hands of the Turkish police for reasons of religion, membership of a particular social group and political opinion, in particular, by reason of his being a Kurd and a Christian. While this was only the ‘bare bones’ of Mr Bal’s claims, and while they were in fact fleshed out by him later in ways which were not implied in the sparse statement he elected to include in his application for the visa, this did not prevent that application from having substantially complied with the requirement of the Act and Regulations that he complete Form 866. It was sufficient that he claimed to have a well-founded fear of persecution by the Turkish police by reason of the three Convention grounds he identified*.”[[65]](#footnote-65)

32. Substantial compliance with the completion of the form is one thing but not lodging the form at all may be another, the Full Court decided in *Pradabsuk v Minister for Immigration and Multicultural and Indigenous Affairs*[[66]](#footnote-66) (*Pradabsuk*). It said:

“ *In* Wu [*Wu v Minister for Immigration and Ethnic Affairs and Others* [1996] FCA 1272]*, the Full Court distinguished between the requirement that the visa application be made on a specific form and the obligation to complete the form in accordance with the stated directions. As has already been noted, the Full Court held that in relation to the requirement to use the prescribed form there was not room for any ‘partial compliance’ with the requirements of the section. However RD Nicholson J (with whom Jenkinson J agreed) held that substantial compliance would be sufficient in relation to the manner in which the prescribed form is completed. That distinction has been observed and followed in subsequent cases (see, eg,* Bal v Minister for Immigration and Multicultural Affairs *(2002) 189 ALR 566).*”[[67]](#footnote-67)

33. In *Pradabsuk*, the Full Court considered r 1128CA(3)(d) of Schedule 1 to the Migration Regulations which applied to each of the visa applications made by the appellants. It provided:

“*Application must be accompanied by satisfactory evidence that:*

*(i) the applicant has undergone a medical examination, for the purposes of the application …; and*

*(ii) for an applicant who is at least 16 years old – during the 12 months immediately before the day when the application is made, the Australian Federal Police completed a check of criminal records in relation to the applicant.*”

34. In light of this provision and applying principles referred to in *Wu* and *Bal*, the Full Court of the Federal Court analysed r 1128CA(3)(d)(ii):

“ *The requirement specified in cl 1128CA(3)(d)(ii), is not to be equated with the duty to complete a form in accordance with the stated directions – in respect of which ‘substantial compliance’ will be sufficient. In our view, it is an essential element of the making of a valid visa application that the visa application be accompanied by satisfactory evidence of the prescribed event. As already discussed, there is an inherent flexibility in the requirement to provide ‘satisfactory evidence’, but the clause does not admit of ‘substantial compliance’ in relation to the event that must be evidenced, namely, that the AFP has completed a check of criminal records in relation to the visa applicant.*”[[68]](#footnote-68)

35. It is apparent from this passage that it is important to analyse the particular legislative provision to ascertain precisely what it is that must be established and how it must be established. The “*what*” in that case was that, in the 12 months before the application for a visa was lodged, the Australian Federal Police (AFP) had completed a check of criminal records in relation to the applicant. The “*how*” was that there was “*satisfactory evidence*” that the check had been completed. There was no room to read into the provision a requirement that a check by any police force would suffice. The requirement was that the police check be by the AFP.

36. An analysis of ss 347 and 348 of the Migration Act led the majority of the Full Court in *SZJDS v Minister for Immigration and* Citizenship[[69]](#footnote-69) (*SZJDS*) to decide that there was no room for the operation of any doctrine of substantial compliance when applying to the Migration Review Tribunal (MRT) for review of an MRT-reviewable decision. Section 347 provided that the application “*… must … be made in the approved form*”,[[70]](#footnote-70) given to the MRT within the prescribed period and be made by certain persons in specified circumstances. Except in certain circumstances, the MRT was required to review the decision “*… if an application is properly made under section 347*”.[[71]](#footnote-71) Different forms were approved for different circumstances and SZJDS chose the wrong one initially and, later, the correct one. The consequences of his choice do not matter in this case. What matters is that the majority of Full Court, Rares and Cowdroy JJ, to conclude that an application would only be made validly if the correct form had been used.[[72]](#footnote-72)

**B. The principles from those authorities**

37. The principles to be drawn from the authorities would seem to be:

1. Unless there is a contrary intention in the enactment under consideration, strict compliance with a form prescribed by that enactment is not required and substantial compliance is sufficient: AI Act; s 25C and any provision in the enactment such as SRC Act; s 54(5).

(2) In deciding whether there is a contrary intention or not, regard is to be had to the words used by Parliament in requiring a prescribed form to be used, any use that may be made of the form and any factors that are dependent upon, or link in with, the form.

(3) The doctrine of substantial compliance does not permit any change to the essential character of what it is that Parliament has required.

(4) What will amount to substantial compliance will depend on, and be shaped by, the reasons underpinning the requirement that there be a form at all.

***What factors are relevant in considering whether there has been substantial compliance?***

**A. Must the approved form be used?**

38. I have set out the relevant provisions of s 54 at [14]-[15] above but I will summarise them here. Compensation is not payable to a person under the SRC Act unless “*… a claim for compensation is made … under this section.*” There has to be a claim. What is required of that claim is that it be a “*written claim*” and that it be a written claim “*in accordance with the form approved by Comcare for the purposes of …*” s 54(2)(a). In most cases, it must also be accompanied by a certificate by a legally qualified medical practitioner in accordance with the form approved by Comcare for the purposes of s 54(2)(b). Where a “*written claim*” has to be accompanied by a certificate “*of the kind referred to in paragraph (2)(b)*”, the claim shall be taken not to have been made. Strict compliance with either approved form is not required, s 54(5) provides, and substantial compliance is sufficient. The claim is given to the relevant authority, being Comcare in this case, and Comcare passes a copy on to the employing agency.

39. The first thing I note is that the requirement of s 54(2)(a) is that the claim must be “*… in accordance with the form approved …*”. The words “*in accordance with*” carry with them the notion that slavish adherence to the form is not necessary. A claim that is in conformity with, or consistent with, the approved form will suffice. The same would be true of the certificate by the registered medical practitioner and attached to the claim.

40. In reaching this understanding of the expression “*in accordance with*”, I rely on the summary of the various dictionary meanings and authorities given by Porter J in his judgment in *Pearson v Richardson*:[[73]](#footnote-73)

 “ *Next, the phrase ‘in accordance with’ should be given its ordinary meaning. The Oxford English Dictionary, gives to ‘accordance’ the principal meaning of ‘the action or state of agreeing; agreement; harmony; conformity’. In* Walker v Wilson *[1991] HCA 8; (1991) 172 CLR 195, the High Court was dealing with a journey claim provision in workers compensation legislation, which required for a particular type of journey, that it be ‘undertaken in accordance with the terms and conditions of ... employment’. Brennan J said that the qualification, in order to better conform with the policy of the legislation and to adopt a construction more favourable for the worker, should be construed as meaning simply consistent with the terms and conditions of employment. Deane, Dawson, Toohey and McHugh JJ, said that in the context of the provision, the words ‘in accordance with’ should be construed as meaning ‘in conformity with’ or ‘consistently with’*. *…*[[74]](#footnote-74)

41. Does the requirement that the written claim need be “*in accordance with*” the approved form go so far as to mean that it is not necessary to use the form at all? Is it the case that, provided the claim is written and the information it provides is in conformity with, or consistent with that required by the approved form, that is enough? In considering those questions, I note that the requirement in s 54(2)(a) for a written claim “*in accordance with*” the approved form is to be contrasted with a requirement such as that in s 347(1)(a) of the Migration Act considered in *SZJDS*. That requirement was that an application “*… must … be made in the approved form*”. There was no room for its being in accordance with the approved form. Rather it had to be made “*in the approved form*”.

42. The requirement in s 54(2)(a) is to be compared with that in s 54(2)(b) relating to the certificate. That certificate too must be in accordance with the approved form but the suggestion that it need only be in conformity with, or consistent with the approved form is strengthened when regard is had to s 54(3). That provision requires a written claim to be accompanied by a certificate “*of a kind*” referred to in s 54(2)(b). If the certificate could only be “*in the approved form*” and no other, there would have been no need to use the descriptive words “*of a kind*”. The requirement would then have been that the written claim be accompanied by “*a certificate referred to in paragraph (2)(b).*”.

43. In view of these matters, I have concluded that a written claim need not be made on the form approved by Comcare provided that it is in conformity with, or consistent with, the approved form in the sense that it provides all of the relevant information. What would seem not to be arguable is that the claim must be a written claim. My conclusion would seem to be consistent with the approach taken by Edmonds J in *Buhr v Comcare*[[75]](#footnote-75)(*Buhr*), to which I refer below in a different context. His Honour took into account a series of letters from Mr Buhr to Comcare asserting that he had sustained a psychiatric injury at the Gosford office of the Department of Social Security (DSS) and medical reports sent to Comcare by his treating psychiatrist. Comcare, he found, had been aware of the general nature of Mr Buhr’s complaints about his work and neither was prejudiced by the way in which he had made his claim. He concluded that:

 “*… notwithstanding the lack of a formal claim for a delusional disorder, the requirements of s 54 were, on the facts of this case, substantially complied with by the applicant.*”[[76]](#footnote-76)

**B. Factors guiding assessment of whether there has been substantial compliance with s 54 of the SRC Act**

**B.1 The requirements of the SRC Act**

44. The case of *Buhr* refers to the rationale underpinning the notification provisions in s 53 and the requirements of s 54 as ensuring that Comcare is not prejudiced by late notification. I would add to that the need for both Comcare and the claimant’s employer to be aware of the basis on which Comcare is said to be liable. Having regard to the SRC Act and taking it at its broadest, that requires a claimant to identify the injury for which compensation is claimed, how that injury is attributable to the claimant’s employment with the relevant agency and the nature of the compensation claimed. That information is required by Comcare or any other relevant authority in order to begin its investigation of the claim. It is required by the claimant’s employer so that it knows at least the nature of the claim and has some context so that it can begin its own enquiries so that it can properly respond to Comcare when it calls upon it to do so. Section 54(4) ensures that the employer is notified of the claim.

45. The final matter that I will turn to is the information required by the approved form. It consists of two parts. A claimant completes Part 1 and the claimant’s supervisor and employer completes Part 2. Part 1 asks the claimant to provide his or her personal details such as name, date of birth and address. It then goes on to ask a number of questions directed at identifying the nature of the injury or illness, how it came about, its symptoms and the nature and provider of any medical treatment sought for it. Questions are also asked about whether similar symptoms have been suffered in the past, whether treatment has been sought for them and whether the claimant has previously claimed compensation. Part 1 concludes by asking the claimant to authorise and consent to Comcare’s collecting personal information or disclosing his or her personal information to relevant persons including his or her employer, health professionals and relevant third parties considered by Comcare to have contributed to the injury.

46. Part 2, which is completed by the employer, requires it to set out information about when it first received the claim from the employee, when the employee first notified it of the injury or illness and the employee’s basis of employment at that time. It goes on to ask for details of the employee’s employment and the action taken to return the employee to work or to prevent further injury. The employer is asked whether it wishes to provide a statement of facts.

47. By requiring the employer to complete Part 2 as part of the approved form, the employer is given prompt notice of the claim and can turn its mind to the factors relevant to the claim at an earlier time than it receives it under s 54(4). It will be in a position to gather together information and material that it considers relevant to enabling Comcare to make a decision that is fully informed on the material facts. After all, the definitions of “*injury*” and “*disease*” require the relevant links to be established between the claimed injury or disease and the employee’s employment by that employer.

**B.2 The authorities**

48. In the Attachment to these reasons, I have referred to authorities that have considered the following issues that I think are relevant to this issue with a summary of my conclusion with regard to each:

1. *Is there a requirement for separate claims for each type of compensation payable in respect of an injury?*

A claim must be made in respect of each form of compensation sought under the SRC Act.

1. *Is there a requirement for separate claims for separate injuries?*

No.

1. *How is the scope of a claim determined?*

Care must be taken to read the claim in a broad, practical and generous manner. The claim is not limited by the diagnosis attributed to the injury claimed. Regard should also be had to any functional incapacity of which the claimant complains to understand the nature of the injury for which compensation is claimed. There must be something that indicates what is claimed to be the connection between the injury for which compensation is claimed and the claimant’s employment.

***Did Ms Boulton make a claim in respect of an aggravation of a major depressive disorder sustained on 15 November 2011?***

**A. Was there a claim in respect of injury on an approved form?**

49. It was agreed between the parties that Ms Boulton did not make a claim for this injury on an approved form. I have first considered whether Ms Boulton’s claim can be considered as part of the formal claim that she did make. With the various principles in mind, I have then examined the documents for a document that can be regarded as an informal claim.

**B. Is the claim incorporated in the first claim?**

50. I do not consider that Ms Boulton’s first claim is broad enough to incorporate a claim for an aggravation of a major depressive disorder sustained on 15 November 2011. While it may be arguable that the conditions she claimed are broad enough to incorporate a claim in relation to an aggravation of those conditions as well as the conditions themselves, I do not consider that the date and circumstances in which the injury was claimed to have been suffered can be read to incorporate events occurring more than two years later. Although I do not consider that Ms Boulton’s claim is confined to one that is focused on an injury occurring at 9:00am on 1 September 2009, as she wrote in her claim, I do consider that it should bear some relationship to the dates or periods of time she specified in her annexures to the claim as being relevant to the injury.

51. The dates detailed in the Timeline attached to her Supplementary Statement dated 6 July 2013 extended from 10 August 2009 until 3 March 2010. That Timeline had been prepared in relation to an earlier matter. Therefore, I have gone back to her Supplementary Statement which is dated 6 July 2013 and which was attached to the claim. In so far as her employment with the Bureau was concerned, the events on which Ms Boulton focused in the Supplementary Statement related to those occurring from February to October 2010. Although she stated that she continued to suffer from the effects of bullying up until May 2012, she did not refer to any fresh episodes of bullying or any fresh episodes relating to her employment that was causally linked to the injury for which she claimed compensation. That is not to say that the ongoing effects would not be relevant were the claim to be accepted and the ongoing effects of an injury were being assessed. On the material, they are not relevant in determining whether Ms Boulton suffered an injury within the meaning of the SRC Act. Even on a broad reading of that material, the claim cannot be read as a claim for an aggravation of an injury said to have occurred on 15 November 2011.

52. Comcare decided Ms Boulton’s claim on the basis that her injury occurred not on 9 September 2009 but on 23 February 2010. It was required to do that because that was the first occasion on which she had sought medical treatment for it. It accepted liability for Generalised Anxiety Disorder for a closed period from 23 February 2010 to 11 March 2010. Unless a review of that determination was sought by Ms Boulton or by the Bureau or it chose to review the decision of its own motion, Comcare had exhausted its powers in relation to her first claim.

53. There is nothing to suggest that Comcare reviewed its determination on its own motion. Instead, it decided that there was a second claim and identified it with a fresh Claim Reference. The second injury was said to relate to an injury suffered on 5 July 2012 and so outside the term of Ms Boulton’s employment. Comcare’s correspondence with the Bureau and with Dr Hundertmark indicates that the injury was claimed to have been suffered on 10 September 2010. Presumably, the reference to the date of 5 July 2012 as the date of injury was the date on which Ms Boulton first sought medical treatment for the claim. That is a possible explanation for the discrepancy in the dates.

54. Another possible explanation is that the date of 5 July 2012 was claimed to be the date of injury. That would seem to have been the understanding of the Bureau and it would be an understanding consistent with the information in the letter it received from Comcare and that was dated 7 November 2013. From the contents of the Bureau’s memorandum to Comcare on 29 November 2013, it would certainly seem to be the case that it did not regard Ms Boulton’s claim to the HRC as a claim under the SRC Act. All that it did was to attach its response to the HRC complaint and add copies of relevant documents relating to Ms Boulton’s terms of employment and the Bureau’s anti-bullying and anti-harassment policies.

55. When I read the HRC complaint, I note that Ms Boulton states that the events that occurred during her employment by the Bureau and that she had set out earlier in detail, led to her suffering a depression episode, anxiety, major depression, severe anxiety and PSTD. Ms Boulton sent a copy to Comcare on 30 July 2013 and so shortly after she lodged her claim in the approved form. In sending it, Ms Boulton clearly acknowledged in her covering email that she understood that Comcare focused on the injury and the HRC on the human rights aspects. Taking the email in context, I am satisfied that her sending a copy of her complaint to the HRC was a means of giving context to her formal claim and not as a basis for another claim under the SRC Act. It related to her employment and the ill-effects she claimed she had suffered as a result but it is directed to a claim for compensation in the proceedings in the HRC; not a claim under the SRC Act.

56. Furthermore, it is not accompanied by a medical certificate of a kind referred to in s 54(2)(b) or at all. Substantial compliance with the approved form is all that is required of the medical certificate but the substantial requirement provisions of s 54(5) do not modify the requirement to have a certificate of that kind accompanying a claim for compensation. Substantial compliance relates only to the certificate’s form and not to the fact of its accompanying the claim. Until that certificate is given to, in this case, Comcare, the claim is taken not to have been made. Therefore, even if the HRC complaint and any accompanying documents could be said to constitute a claim, and I do not think they do, the complaint cannot be taken to have been made because it was not accompanied by a medical certificate.

57. The consequence of my conclusion is that Comcare had no basis on which to make its determination dated 24 January 2014. It could not decide whether it was liable to pay compensation until it received a claim. Comcare has purported to review the determination and to make a reviewable decision. In light of the principles in the case of *Collector of Customs (New South Wales) v Brian Lawlor Automotive Pty Ltd*[[77]](#footnote-77)(*Brian Lawlor*), I consider that the Tribunal has power to consider the reviewable decision because it is a decision made in fact. The principles established in *Brian Lawlor* were summarised by Franki J in *Deputy Commissioner of Patents v Board of Control of Michigan Technological University*.[[78]](#footnote-78) He referred to the judgments of both Bowen CJ and Smithers J in that case but both may be summarised in the conclusion expressed in the judgment of the Chief Justice:

“ *… In the view which I take as to the meaning of s. 25 of the* Administrative Appeals Tribunal Act *… an applicant to the Tribunal has standing and the Tribunal has jurisdiction provided there is a decision in fact and provided further that the decision purports to have been made in exercise of powers conferred by an enactment whether or not as a matter of law it was validly made and whether or not action on the basis there was power to make the decision was right or wrong. …*”[[79]](#footnote-79)

58. The fact that the Tribunal has power to review the reviewable decision does not mean that it has power to review a reviewable decision setting aside a determination that was made on a claim that I have found has not been made. The only power that I have is to set aside the determination on the basis that, in the absence of a claim under s 54 of the SRC Act, there was no power to make it.

***Is there a requirement for separate claims for each type of compensation payable in respect of an injury?***

59. When regard is had to the provisions relating to the various categories of compensation that are payable and to the making of determinations and to their review as well as to the requirement in s 54(1) that there be a claim before compensation is payable to a person, I come to the conclusion that a claim must be made in respect of each form of compensation. A claim must, for example, be made in respect of compensation sought for incapacity arising out of an injury, medical expenses incurred in respect of treatment obtained in relation to that injury and permanent impairment resulting from an injury.

60. This conclusion is consistent with that reached by the Full Court of the Federal Court in *Lees v Comcare*.[[80]](#footnote-80) The Court considered the jurisdiction of the Tribunal to consider a claimant’s entitlement to compensation for permanent impairment and non-economic loss when the application before it sought review of a reviewable decision affirming a determination made under s 14 rejecting his claim for compensation in respect of major depressive disorder. It also considered its jurisdiction in the context of its review of a reviewable decision affirming a determination that Comcare would not pay taxi fares incurred in obtaining medical treatment. The Tribunal had decided that, in that context, it could review the claimant’s entitlement to permanent impairment.

61. I note that it differs from the conclusion reached by the Full Court of the Federal Court in *Irwin v Military Rehabilitation and Compensation Commission*[[81]](#footnote-81)(*Irwin*). The Full Court considered the Tribunal’s jurisdiction when reviewing a decision to refuse to accept liability for an injury. The Tribunal had decided that, if it were to find that the MRCC were liable for Mr Irwin’s injury, it could not go on to decide whether Mr Irwin was entitled to compensation for permanent impairment. After examining s 319 of the *Military Rehabilitation and Compensation Act 2004* (MRCC Act)and the claim, the Full Court said:

“ *In the present case s 319 of the Military Compensation Act clearly contemplates that a claim can be made simultaneously for an acceptance of liability and a payment of compensation. Mr Irwin made such a joint claim. The Commission was obliged, under s 333, to determine that joint claim. The Commission did so. It rejected it on the ground that Mr Irwin had suffered no ‘service injury’. That finding made it unnecessary for it to deal with the compensation aspect of the claim. This did not mean that the compensation determination could not have been made contemporaneously had the Commission made a positive finding on the liability issue. Indeed, in such circumstances, it would have been required, by s 333, to do so. It can, therefore, be said that the rejection determination involved both an explicit rejection of the liability claim and an implicit rejection of the compensation claim. This conjoint determination was reviewable.*”[[82]](#footnote-82)

62. The Full Court’s conclusion is not inconsistent with that reached in *Lees* for the provisions of s 319 of the MRCC Act are very different from those of s 54 and are broad enough to allow that conclusion. Section 319 provides:

“*(1)  A claim may be made under this section for one or more of the following:*

*(a)  acceptance of liability by the Commission for a service injury sustained by a person or a service disease contracted by a person;*

*(b)  acceptance of liability by the Commission for the service death of a person;*

*(c)  acceptance of liability by the Commission for the loss of, or damage to, a member's medical aid;*

*(d)   compensation.*

*Note: Section 320 sets out who may make the claim.*

*(2)  A claim must:*

*(a)  be in writing; and*

*(b)  be given to the Commission; and*

*(c)  satisfy the requirements (if any):*

*(i)  prescribed by the regulations; or*

*(ii)  determined in writing by the Commission;*

*as to the form and content of claims, or claims of that kind.*

*Note:   Section 323 sets out when a claim is taken to have been given to the Commission.*

*(3)  The Commission must give a copy of a claim that has been made in respect of a person to the Chief of the Defence Force if:*

*(a)  the claim is for the acceptance of liability by the Commission for a service injury sustained by the person, a service disease contracted by the person or the person's service death; and*

*(b)  the person was a member of the Defence Force:*

*(i)  for a claim relating to a service injury or disease -- at the time the claim was made; or*

*(ii)  for a claim relating to a service death -- at the time of death.*

*(4)  The Commission must give a copy of a claim that has been made in respect of a person to the Chief of the Defence Force if:*

*(a)  the claim is for compensation under Part 2 of Chapter 4 (permanent impairment); and*

*(b)  the person was a member of the Defence Force at the time the claim was made.*”

***Is there a requirement for separate claims for separate injuries?***

63. In my previous two paragraphs, I have considered the issue of separate claims in the context of one injury leading to claims for compensation of more than one type payable under the SRC Act. I now turn to the question of whether there is a requirement that an employee make separate claims under s 14 for compensation in respect of separate injuries?

64. The observations made by the High Court in *Canute v Comcare*[[83]](#footnote-83) (*Canute*) regarding the definition of “*injury*” are relevant:

“ *At this juncture, three things may be observed about the concept of ‘an injury’. First, the Act does not oblige Comcare to pay compensation in respect of an employee’s impairment; it is liable to pay compensation in respect of ‘the injury’. Secondly, the term ‘injury’ is not used in the Act in the sense of ‘workplace accident’. The definition of ‘injury’ is expressed in terms of the resultant effect of an incident or ailment upon the employee's body. Thirdly, the term ‘injury’ is not used in a global sense to describe the general condition of the employee following an incident. The Act refers disjunctively to ‘disease’ or ‘physical or mental’ injuries and, at least to that extent, it assumes that an employee may sustain more than one ‘injury’. The use in s 24(1) of the indefinite article in the expression ‘an injury’ reinforces that conclusion.*”[[84]](#footnote-84)

65. In *Canute*, an employee, Mr Canute, had injured his back in the course of his employment in 1997 and again in 1998. He claimed compensation after the second incident and Comcare accepted liability up to and including June 1999. In September 1999, Mr Canute lodged a claim for permanent impairment and he was awarded compensation under s 24 on the basis of his having suffered 12% whole person impairment. In 2002, Mr Canute lodged a second claim for compensation for permanent impairment on the basis that he had suffered an adjustment disorder with depression, chronic severe low back pain and ongoing depression. Comcare denied liability on the basis that he had not shown an increase in whole person impairment of at least 10%. In making that decision, Comcare relied on s 25(4) of the SRC Act. It provides that, where it has made a final assessment of the degree of permanent impairment, as it had done in Mr Canute’s case, no further amounts of compensation were payable to the employee in respect of a subsequent increase in the degree of impairment unless the increase were more than 10%.

66. The High Court recognised the requirements of s 25(4) but then continued:

“*… It is the occurrence of ‘an injury’ which both actuates and defines the ambit of Comcare’s duty pursuant to s 24 of the Act. Once that duty has been performed, subs (3) and (4) of s 24 operate, in a self-executing way, to quantify the amount of compensation payable by Comcare. That amount is payable in satisfaction of Comcare’s liability which arises “in respect of the injury” under s 24(1). The Act only adopts the “whole person impairment” approach with respect to permanent impairments resulting from each “injury”. That “whole person” approach cannot properly be used to deny the applicability of s 24 to something which corresponds to the legislative definition of an “injury”. The statutory criterion of an “injury” is antecedent to the concept of “whole person” impairment, not the other way around.*

 *Comcare’s preferred construction of the Act also distorts the statutory definition of “injury” in a further way. The task of determining for the purposes of s 25(4) whether there has been “a subsequent increase in the degree of impairment necessitates reference to the guide, by reason of s 24(5). But, it is to be recalled, the inquiry mandated by that subsection is as to the degree of permanent impairment of the employee “resulting from an injury”. To treat as going to that inquiry something which independently satisfies the statutory definition of “an injury” tends to conflate into one all injuries suffered after one workplace incident. The flow-on effect in terms of s 24 thereby distorts the concept of “injury” so as to assume the sense of the totality of the effects of a workplace accident, contrary to the terms of the definition.*”[[85]](#footnote-85)

67. The importance of *Canute* in the context of this case is its focus on identifying what it is that is the “*injury*” in respect of which compensation is claimed. It is not the totality of effects of a workplace accident. It is the disease, as defined, or a physical or mental injury (or aggravation thereof) that arises out of, or in the course of an employee’s employment that is the relevant injury. It is also important to note that Mr Canute had made a claim for permanent impairment resulting from the adjustment disorder under s 24. There is no suggestion in the judgment of the High Court that Mr Canute was required first to make a claim under s 14. Section 14 provides that Comcare is liable to pay compensation in respect of an injury if the injury results in, among other things, impairment. A claim under that section might be seen as a logical step to take and particularly so if the precise form of compensation sought is not yet known. It would not, however, seem to be a necessary step if a claimant knows the form of compensation he or she seeks. The fundamental issues that require determination will be the same in both: has an employee had an “*injury*” as defined in the SRC Act and, in the context of Mr Canute’s case, has it resulted in a permanent impairment?

68. This does not answer the question that I have posed in the heading i.e. whether there is a requirement for separate claims to be made for separate injuries. *Canute* requires separate identification of injuries. Section 54(1) requires a claim for compensation to be made by or on behalf of the person before compensation is payable under the SRC Act. While strict compliance with the form of the claim approved by Comcare is not required and substantial compliance is sufficient, there are two requirements of s 54 that are not negotiable. One is that the claim must be accompanied by a certificate of a legally qualified medical practitioner.[[86]](#footnote-86) The second requirement is that Comcare give a copy of the claim to, in this case, the Principal Officer of the Bureau.[[87]](#footnote-87)

69. When read with the liability imposed on Comcare to pay compensation “*in respect of an injury*” and the separate expressions of Comcare’s liability to pay that compensation when “*an injury* … *results in*” certain outcomes, it seems to me that s 54 does not necessarily require a separate claim form to be made in respect of each injury. What it requires is that there be a claim in respect of each injury. It does not go further and provide that the claim made in respect of each injury be made on a separate claim form. That it does not do so would seem to be consistent with administrative expediency. Comcare needs to be able to identify the injury in respect of which a claim is made. It can do that from the one claim form even if more than one injury is described and claimed. The employee’s employer will be able to understand the nature of the claim when it is given a copy of it and will be able to provide information to assist Comcare in its determination of whether its employee suffered an injury.

***How is the scope of a claim determined?***

**A. The authorities**

**A.1 *Abrahams v Comcare***

70. In *Abrahams v Comcare*[[88]](#footnote-88) (*Abrahams*), Madgwick J set out five propositions relating to the exercise of the Tribunal’s powers under s 43 of the AAT Act when reviewing a reviewable decision under the SRC Act:

“*1. In construing a document purporting to be a notice of injury under the Act, a broad, generous and practical interpretation should be made, consistent with both the beneficial purposes of the Act and the likelihood that laypeople of differing levels of education, differing levels of medical advice and differing levels of legal advice (indeed in most cases they would not have any) will be giving the notice.*

*2. In deciding what injury it is, as to which a claimant has given notice, the purposes of giving notice must be borne in mind. These are to enable Comcare, with the aid of the relevant employing agency, to determine whether the claim should be met.*

*3. The powers of an original decision-maker would extend to regarding informal notice as having been given in amplification of a notice formally given.*

*4. Those powers would further extend to enabling a consideration of a claim better explaining, or better justifying, a claim in respect of an injury in respect of which notice had been fairly given.*

*5. There is not always a bright dividing line available to assist in the decision whether powers of the kinds mentioned are being exercised in aid of a better understanding of a claim made in respect of an injury of which notice has been given, or whether the changed notice is sufficiently fundamental as to indicate that a different injury is being asserted, which will require a different decision from a decision in respect of the originally claimed injury under consideration. In determining that matter, considerations of the purpose of giving notice of injury, and more generally of enabling the decision-maker to have a fair opportunity to investigate the claim properly, are paramount*.”[[89]](#footnote-89)

71. Mr Ahrahams had claimed compensation in 2001 for “*overuse injury affecting the right arm*”. Comcare accepted liability for particular conditions of his upper arm, shoulder, elbow, forearm and neck but, in 2003, made a determination that he was no longer entitled to compensation in respect of the injury. In 2003, Mr Abrahams was diagnosed with carpal tunnel syndrome in his right wrist and hand. His claim was rejected by Comcare. In the Tribunal, Mr Abrahams put his case on the basis that his wrist complaints were part of, and subsumed in, broader and ongoing and varying difficulties over his right upper limb, right shoulder and neck.

72. The Tribunal had decided that Mr Abrahams should seek review of Comcare’s decision to cease effect and that the wider issues could not be considered in the context of a claim for carpal tunnel syndrome. On appeal, Madgwick J set out the information Mr Abrahams had provided in his claim for carpal tunnel syndrome. His Honour found that:

“*… In the context, it is clear that he was simply adopting the then medical diagnosis of his injury. It was nevertheless entirely clear that he was complaining in fact of pain, swelling and inflammation in the right hand and wrist associated with decreased ability to lift and move objects with his right hand and decreasing strength in the hand.*”[[90]](#footnote-90)

73. Madgwick J went on to say that medical diagnoses change and evolve. To insist on having regard only to the injury claimed in the terms described in the claim is to take an overly narrow view of the claim. The Tribunal had power to change it from the description of the injury given in the claim “*… provided that the same symptoms, disability and timeframe were still being asserted. …*”.[[91]](#footnote-91)

**A.2 *Buhr v Comcare***

74. I have been referred to several cases. The earliest of these is *Buhr v Comcare*[[92]](#footnote-92)(*Buhr*). It was not disputed that Mr Buhr had suffered an injury in 1988 when he was employed by the Australian Taxation Office (ATO). On 24 February 1989, Comcare had accepted liability for his adjustment disorder with features of anxiety and depression. In September 2003, Comcare arranged for Mr Buhr to be reviewed by a psychiatrist. The psychiatrist was of the opinion that Mr Buhr was no longer suffering from an adjustment disorder with features of anxiety and depression but from a constitutional delusional disorder. Mr Buhr’s own psychiatrist agreed with the diagnosis of a delusional disorder but attributed it to events that had occurred on his return to work programme at another agency, the Department of Social Security (DSS). He had started with DSS in August 1989.

75. On 3 August 2004, Comcare gave notice to Mr Buhr that it was reviewing his ongoing payments of compensation. It was authorised to do an “*own motion*” review under s 62(1) of the SRC Act. On 25 October 2004, a determining authority of Comcare determined that, as at 1 December 2004, Mr Buhr was no longer entitled to compensation under ss 16 (medical expenses) and 20 (incapacity) for compensation for a psychological condition and a soft tissue injury to his neck suffered during his employment with the Commonwealth. As at 1 December 2004, the psychological condition was described as delusional/paranoid disorder and, as a result of that condition, Mr Buhr was unfit for work. The determining authority also considered whether it was liable in respect of Mr Buhr’s delusional disorder and decided that the events on which it was based had either been refuted or were unfounded. Another delegate of Comcare affirmed the determination.

76. On review, the Tribunal found that Mr Buhr no longer continued to suffer from an adjustment disorder with features of anxiety and depression as at 1 December 2004. It found instead that Mr Buhr suffered from a delusional/paranoid disorder at that date that disabled him from continuing to work. The Tribunal found that, between 1988 and 2004, Mr Buhr had continued to make claims about his psychological condition but had not made a formal claim giving details of a new condition. The Tribunal decided that, in reviewing the reviewable decision, it could properly consider his condition as at 1 December 2004 and events after 1988. In particular, it could have regard to events occurring at DSS after August1989. Having considered those events, the Tribunal decided that any psychological condition from which he suffered was not an injury within the meaning of the SRC Act. The Tribunal found that it was excluded because it was a disease or injury, or aggravation of a disease or injury that Mr Buhr had suffered as a result of his failure to obtain a benefit in connection with his employment while with DSS. Therefore, it was excluded from the definition of “*injury*” in respect of compensation is payable under the SRC Act.[[93]](#footnote-93)

77. On appeal, Edmonds J had to decide whether the Tribunal should have limited its consideration to reviewing the decision to cease liability under ss 16 and 20. The determination made by the determining authority was, Mr Buhr submitted, limited to his condition of adjustment disorder with features of anxiety and depression. It did not relate to whether there was any liability under s 14 in relation to a new injury of delusional/paranoid disorder. Comcare submitted that the question whether liability should be accepted for delusional disorder was a question that the Tribunal could consider. The reviewable decision considered liability for the condition of adjustment disorder with features of anxiety and depression and the Tribunal was not limited to that diagnosis. It could consider the evidence and assess whether liability for another condition had emerged in the ongoing progress of the case.

78. Edmonds J first looked at the issues from the point of view of whether the issue of liability for the delusional disorder had been considered in the determination and in the reviewable decision. He decided that it had been and so the Tribunal had jurisdiction. This is what might be described, as Comcare had, the “*hierarchy of decision-making*” issue.[[94]](#footnote-94) It is clear from the paragraph following his conclusion that Edmonds J had assumed that Mr Buhr had made a claim for compensation at some stage. He did not go so far as to say that the Tribunal would have had jurisdiction had there been no claim made by Mr Buhr subsequent to any claim he made in 1989. The paragraph reads:

“ *In conclusion on this ground, I would merely add that if my conclusion was wrong and the Tribunal lacked jurisdiction to consider the delusional disorder and/or that no claim had been made for it (see question/ground 2 below), I agree with counsel for Comcare that there would be clear futility in remitting the case to the Tribunal for reconsideration. If the Tribunal lacked jurisdiction initially, it would not be in a better position to consider these issues on remittal.*”[[95]](#footnote-95)

79. His Honour referred to [23] of the Tribunal’s reasons in which it found that Mr Buhr had not made a formal claim but had considered his continuing correspondence with Comcare and its responses and medical examination as a claim under the SRC Act. Edmonds J concluded:

“ *Comcare further submitted that the Tribunal’s conclusion at [23] is consistent with s 54 of the SRC Act. That is, notwithstanding the applicant’s lack of a formal claim for a delusional disorder, the requirements of the section were, on the facts of this case, substantially complied with by him.*

 *Finally, reference was made to the rationale for ss 53 and 54 of the SRC Act, namely, to prevent prejudice to Comcare by late notification of events that could give rise to a claim. Comcare has long been aware of the general nature of the applicant’s complaints about his work between 31 August 1989 and 26 November 1990. Neither the applicant nor Comcare adduced evidence that Comcare had been prejudiced by a claim being made in the way it was.*

 *I agree that the Tribunal’s finding at [23] was open on the evidence and that, notwithstanding the lack of a formal claim for a delusional disorder, the requirements of s 54 were, on the facts of this case, substantially complied with by the applicant.*

 *I am therefore of the view that the Tribunal’s finding at [23] does not raise a basis for an appeal on a question of law under s 44 of the AAT Act.*”[[96]](#footnote-96)

80. A reading of the Tribunal’s decision[[97]](#footnote-97) shows that [23] of the reasons was concerned only with a formal claim for medical expenses and periodical compensation. In the previous paragraph, [22], reference was made to Mr Buhr’s having made a claim for compensation for permanent injury on 6 August 1990 on the basis he was “*… mentally unstable and confused*”. That had been rejected on 10 May 1991 but, on review on 31 August 1992, Comcare had again decided that it was liable to pay compensation.[[98]](#footnote-98) There had also been ongoing communication with Mr Buhr’s treating psychiatrist in the meantime.[[99]](#footnote-99)

**A.3 *Re Cavanagh and Comcare***

81. In *Re Cavanagh and Comcare*[[100]](#footnote-100) (*Cavanagh*), Ms Cavanagh had suffered a spinal injury in the course of her employment as nurse. Comcare accepted liability for intervertebral disc protrusion, a related inflammatory condition, secondary epilepsy and depression. Ms Cavanagh then made a claim for arachnoiditis arising from the accepted conditions. Comcare rejected Ms Cavanagh’s claim for arachnoiditis and affirmed its decision.

82. On review, the Tribunal was given material suggesting other explanations for her symptoms. It noted that her claim was confined to arachnoiditis and made no reference to any psychological condition or component and continued:

“*… A bare claim for a nominated condition entailing a specific diagnosis where there is no reference to any functional component does not involve the same considerations as a claim for compensation for permanent impairment, which in our view, for the reasons referred to above, requires a broader review of the claimant’s history and condition, especially where the claim refers to a psychological component relating to the claim of arachnoiditis. We therefore consider that we do not have jurisdiction in separate proceedings relating to the claim of arachnoiditis to determine whether Comcare is liable to pay compensation in respect of the injury or injuries that would apply if we were to accept one or more of the postulated alternative diagnoses (namely degenerative lumbar spondylosis, spinal canal stenosis and conversion disorder), because there has been no reviewable decision by Comcare as to whether it is liable for any such injuries. …*”[[101]](#footnote-101)

**A.4 *Sellick v Australian Postal Corporation***

83. In *Sellick v Australian Postal Corporation*[[102]](#footnote-102) (*Sellick*), the Full Court decided the appeal on issues unrelated to the compass of the claim for compensation made by Mr Sellick. Its members did express a view on the issue, though. Buchanan J said:

“ *There may be a real question whether the AAT is jurisdictionally confined by the particular description given by an employee of the cause of an otherwise compensable injury. Although it is necessary that an injury, in order to properly found a claim for compensation, arise out of or in the course of employment it may not be necessary, at least in every case, that absolute precision be supplied if it is otherwise clear that a sufficient connection with employment exists. I would not, without further consideration, endorse a suggestion that a claim that a medical condition was based on walking would exclude from consideration, in the jurisdictional sense, the possibility that the true explanation, supported by medical evidence, was that it was caused by lifting. …*”[[103]](#footnote-103)

84. Mansfield and McKerracher JJ were of a similar view:

“ *There is something to be said for the proposition that the notice of injury was initially given by the applicant, namely ‘pain in the right shoulder’ was, by the subsequent presentation of various medical certificates and medical reports, sufficient to have constituted a claim that the pain in his right shoulder flowed either from soft tissue injury in the shoulder, or from aggravation of a degenerative spinal condition, or from chronic sprained interspinous ligament, or from a combination of those conditions …*”[[104]](#footnote-104)

**A.5 *Re Durham and TNT Australia Pty Ltd***

85. *Re Durham and TNT Australia Pty Ltd*[[105]](#footnote-105)(*Durham*) is a case heard by Jagot J sitting as a Presidential Member of the Tribunal. She set out two basic principles:

“*…* [I]*n conducting a review under s 64 of the Act, the tribunal’s jurisdiction does not depend on the respondent’s characterisation of the applicant’s claim. Rather, the tribunal must assess for itself the true scope of the claim and is empowered to conduct its review on that basis.*

 *This is not to say that the jurisdictional preconditions set out in the Act … are dispensed with where the tribunal’s characterisation of an applicant’s claim differs from that of the respondent. In such a case, it must be understood that the claim itself – interpretive issues aside – has been the subject of a determination, an application for reconsideration, a reviewable decision and an application to the tribunal, and that the tribunal’s jurisdiction under s 64 has therefore been enlivened.*”[[106]](#footnote-106)

86. Jagot J brought these principles to bear in analysing a claim for compensation made by Mr Durham on 10 May 2010. He made his claim in relation to a knee condition after he had undergone a complete knee replacement. His condition, he said, was as a result of “*wear and tear over 26 years as a driver*”. As Jagot J observed, Mr Durham’s claim was expressed in broad terms. Specific diagnoses, including arthritic diseases, were only offered later in the context of reports obtained from medical practitioners.

87. Jagot J said that Mr Durham’s claim should be given “*broad, generous and practical interpretation*” as endorsed by Madgwick J in *Abrahams*.[[107]](#footnote-107) She looked to the terms of the notice of injury and the claim for compensation and concluded that they were broadly stated.[[108]](#footnote-108) To limit the claim to arthritic disease would be to adopt an unduly restrictive construction of the claim that would be inconsistent with both the terms of the claim and the beneficial purpose of the SRC Act. The case of *Cavanagh* was to be distinguished because it did not concern simply “*a bare claim for a nominated condition entailing a specific diagnosis where there is no reference to any functional component*”. Mr Durham’s claim was broadly expressed. Specific diagnoses were later offered by medical practitioners but were not part of the claim.

**A.6 *Szabo v Comcare***

88. This was the approach taken by the Full Court of the Federal Court in *Szabo v Comcare*[[109]](#footnote-109) (*Szabo*). Mr Szabo was a meat inspector employed by a Victorian agency. He received compensation under Victorian legislation for an injury to his back in September 1985. When he suffered a further injury to his back in 1989, he was employed by a Commonwealth agency and lodged a claim for compensation under the SRC Act. Mr Szabo said that the “*accident*” had happened in the following way:

“*Constant lifting and bending whilst carrying out inspection duties on mutton chain (lifting front legs to inspect necks)*”

 Comcare accepted liability in respect of Mr Szabo’s aggravation of a pre-existing back strain.

89. In 2008, Comcare made a determination of its own motion that Mr Szabo was no longer suffering from the effects of the aggravation of a pre-existing back strain. Mr Szabo asked Comcare for review of its determination. He told Comcare that the evidence demonstrated that, when he had returned to work to perform modified duties, the injury was quite quickly aggravated. Although he acknowledged that there was no longer any work-related aggravation to the injury but said that the stresses and strain of normal day-to-day living were more than enough “*to continually aggravate my back*”. Furthermore, Mr Szabo asserted, the accident injury reports on his file showed that, upon returning to work, “*the added strain to my spine was exacerbated by the constant bending, twisting and lifting of sheep carcasses*”. Relying on medical evidence to the effect that Mr Szabo’s condition was primarily the result of the progression of his pre-existing degenerative conditions which had been made symptomatic by the 1985 injury, Comcare affirmed its earlier determination in 2009.

90. Mr Szabo was of the view that regard should have been had to further evidence to support his claim that he was entitled to compensation. That further evidence was directed to his claim that his injury arose out of the nature and conditions of his employment. The fact that Comcare had accepted liability over the years indicated that it had accepted that the heavy nature of his work and the conditions of his work over many years were the cause of his condition. It would be unconscionable for Comcare to assert that the incident in 1989 was an isolated incident for which liability could be denied in 2008. The Tribunal found that Mr Szabo had not made any accident report or claim in relation to this more general basis. Comcare had not made a determination on that basis and, in the absence of such a determination, Mr Szabo could not ask the Tribunal to make a decision relating to a “*nature and conditions*” claim.

91. The majority of the Full Court, Emmett and Greenwood JJ, reviewed the documents completed by, or on behalf of Mr Szabo at or about the time of the 1989 incident. They looked at the answers he gave to questions asked on the claim form and concluded that:

“*Those answers do not amount to a claim for a disease or injury that was aggravated or contributed to in a material degree by the nature and the conditions of Mr Szabo’s employment.*

*That is not to say that it would not now be open to him to make a claim. However, until such a claim is made, and has been determined by Comcare, there can be no decision that could be the subject of review by the Tribunal. …*”[[110]](#footnote-110)

92. As to the principles governing the construction of a claim form, Bennett J adopted those set out in the judgment of Madgwick J in *Abrahams*. I have set them out at [70] above. Her Honour reached the same conclusion as the majority but did so after noting that the claim form should be interpreted beneficially to him. She also distinguished the case of *Sellick*. I referred to that at [83]-[84] above. She did so by saying that:

“ *This is not a case, like* Sellick v Australian Postal Corporation *(2009) 113 ALD 58, where very different causes of injury or injuries, have been stated. …*”[[111]](#footnote-111)

 Bennett J did not explain that statement but went on immediately to refer to the five accident reports Mr Szabo had lodged with respect to his work with the Commonwealth. They were dated 20 June 1989 (“*constant lifting & bending whilst carrying out inspection duties on mutton chain*”), 24 October 1989 (“*constant lifting & twisting … repetitive work*”) and 25 October 1989 (“*constant lifting, bending & twisting whilst lifting lamb shanks to inspect under necks for contamination. Repetitive action*”)and 8 February 1990 (“*continuous bending across belt*”) and 13 February 1990 (“*repetitive action due to the lifting of hocks … aggravation of existing injury*”.

93. In order to understand that passage in the judgment, I respectfully suggest that it is necessary to go back to the judgments in *Sellick*. There, the claimant had made a very broad statement of the condition from which he suffered in terms of pain and the area of his body affected by that pain. The effect of the judgments of the Full Court is that a general claim of that sort can be read with other material, particularly medical material, to identify both the nature of the condition and its cause. Mr Sellick was not constrained by the broad description he had given. In the case of Mr Szabo, there was no room to take that approach. There was no dispute that his claim had been made in respect of an injury on 20 June 1989 for an aggravation of a pre-existing lower back strain. Given the precise nature of the injury claimed, there would have been no room to broaden the description of the injury. Bennett J’s reference to the five accident reports would seem to suggest that, even if reference were made to other incidents, they could not be relied upon to support a broadening of Mr Szabo’s claim to include a “*nature and conditions*” claim.[[112]](#footnote-112)

94. This would seem to be consistent with the conclusion later expressed by Bennett J when she decided:

“*… I am not satisfied that the claim form, properly understood, extends beyond a claim for a specific injury that occurred on 20 June 1989, which injury was caused by the actions set out in answer to question 3 of the claim form. It is a claim for an injury that occurred on that date.*”[[113]](#footnote-113)

**A.6 *Telstra Corporation Ltd v Kotevski***

95. In *Telstra Corporation Ltd v Kotevski[[114]](#footnote-114)* (*Kotevski*), Mr Kotevski suffered hearing loss during his employment with Telstra. He claimed compensation under the SRC Act under each of ss 14, 24, 27 and 16. In his original claim, which was dated 2 December 2010, Mr Kotevski set out all the information he then knew to support his claim for supply of hearing aids under s 16. He included a quote of the cost. In a letter of 2 August 2011, Mr Kotevski gave what Rares J described as an “*update*” of his earlier claim but, he said, did not alter its fundamental character. Mr Kotevski provided that update after a medical practitioner had given a lower estimate of the cost of supply of hearing aids in his report of 12 April 2011.

96. Telstra accepted liability for the hearing loss under s 14 of the SRC Act but did not address his claim for hearing aids. Despite its not addressing that claim, Telstra did have a report from its own ENT specialist concerning the need for him to wear hearing aids. Mr Kotevski asked Telstra to determine his claim for the hearing aids but it did not respond to him just as it did not respond when he asked it to review what he took to be a refusal of his claim. Sometime after he had applied for review under the SRC Act, Mr Kotevski applied to the Tribunal for review of what he had taken to be a refusal of his claim. Telstra submitted that the Tribunal did not have jurisdiction to consider the matter but the Tribunal decided that it did. On appeal, Rares J agreed finding, after an analysis of the evidence relating to the decision-making process, that Mr Kotevski’s claim for hearing aids had been implicitly rejected both in the determination and, on review, in the reviewable decision.[[115]](#footnote-115)

**B. The principles**

97. The principles that may be drawn from the authorities that followed *Abrahams* adopt those expressed in that case.[[116]](#footnote-116) Care must be taken to read the claim in a broad, practical and generous manner. The Tribunal should not be distracted by the diagnosis that Comcare has attributed to the injury but come to its own conclusion as to the condition that constitutes the injury claimed. Equally, it should not be distracted by the precise diagnosis set out by the claimant in the claim form. Regard should also be had to any functional incapacity of which the claimant complains to understand the nature of the injury for which compensation is claimed.[[117]](#footnote-117)

98. All of the authorities agree that there must be something that can be regarded as a claim. It need not follow the claim form approved by Comcare but it needs to identify the injury claimed in terms sufficient to indicate some claimed connection with employment.[[118]](#footnote-118)

I certify that the ninety eight preceding paragraphs are a true copy of the reasons for the decision herein of

Deputy President S A Forgie.

Signed: ……[sgd]..................................................

Leah Berardi Associate

Date of Hearing 16 February 2015

Date of Decision 28 April 2015

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1. Documents lodged under s 37 of the *Administrative Appeals Tribunal Act 1975* (T documents); T43 at 558 [↑](#footnote-ref-1)
2. T documents; T21 at 80 [↑](#footnote-ref-2)
3. T documents; T46 at 691-704 [↑](#footnote-ref-3)
4. T documents; T51 at 734-740 [↑](#footnote-ref-4)
5. [2007] FCA 575; (2007) 45 AAR 270 [↑](#footnote-ref-5)
6. [2011] AATA 802; (2011) 124 ALD 136 [↑](#footnote-ref-6)
7. [2013] FCA 27; (2013) 209 FCR 558; 299 ALR 346; 59 AAR 143; 133 ALD 339; Rares J [↑](#footnote-ref-7)
8. T documents; T21 at 80 [↑](#footnote-ref-8)
9. T documents; T21 at 82 [↑](#footnote-ref-9)
10. T documents; T22 at 99-102 [↑](#footnote-ref-10)
11. T Documents; T23 at 103 [↑](#footnote-ref-11)
12. T documents; T23 at 106 [↑](#footnote-ref-12)
13. T documents; T23 at 105-123 [↑](#footnote-ref-13)
14. T documents; T23 at 124-126 [↑](#footnote-ref-14)
15. T documents; T23 at 126 [↑](#footnote-ref-15)
16. T documents; T27 at 137 [↑](#footnote-ref-16)
17. T documents; T27 at 137 [↑](#footnote-ref-17)
18. T documents; T27 at 137 [↑](#footnote-ref-18)
19. T documents; T28-T29 at 140-147 [↑](#footnote-ref-19)
20. T documents; T33 at 159 with details at 160-161 [↑](#footnote-ref-20)
21. T documents; T34 at 295-309. The complete letter with attachments is T34 at 295-358 [↑](#footnote-ref-21)
22. T documents; T39 at 371 The complete response with attachments is T39 371-529 [↑](#footnote-ref-22)
23. T documents; T40 at 530 The reasons attached to Comcare’s decision explained that the date of injury was shown as 23 February 2010, rather than 1 September 2009, because, under s 7(4) of the SRC Act, the date of injury is deemed to be the date on which she first sought medical treatment i.e. 23 February 2010. [↑](#footnote-ref-23)
24. T documents; T41 at 542-544 [↑](#footnote-ref-24)
25. T documents; T42 at 545-551 [↑](#footnote-ref-25)
26. T documents; T42 at 547 [↑](#footnote-ref-26)
27. T documents; T43 at 552 The complete response is T43 at 552-678 [↑](#footnote-ref-27)
28. T documents; T46 at 691 [↑](#footnote-ref-28)
29. T documents; T46 at 704 with statement of reasons at 693-704 [↑](#footnote-ref-29)
30. T documents; T46 at 693 [↑](#footnote-ref-30)
31. T documents; T46 at 704 [↑](#footnote-ref-31)
32. T documents; T48 at 711-731 [↑](#footnote-ref-32)
33. T documents; T49 at 732 [↑](#footnote-ref-33)
34. T documents; T51 at 734-740 [↑](#footnote-ref-34)
35. T documents; T51 at 739 [↑](#footnote-ref-35)
36. SRC Act; s 14(1) [↑](#footnote-ref-36)
37. SRC Act; s 4(1) [↑](#footnote-ref-37)
38. SRC Act; s 4(1) [↑](#footnote-ref-38)
39. SRC Act; s 4(1) [↑](#footnote-ref-39)
40. SRC Act; s 4(1) [↑](#footnote-ref-40)
41. Definition of “*Commonwealth authority*”: SRC Act; s 4(1). The Bureau is established under s 5 of the *Meteorology Act 1955* but not as a body corporate. [↑](#footnote-ref-41)
42. Section 16 provides that, in certain circumstances, Comcare is liable to pay compensation in respect of the cost of medical treatment obtained in relation to the injury. Section 17 provides for compensation in respect of injuries resulting in death. [↑](#footnote-ref-42)
43. SRC Act; s 54(3) [↑](#footnote-ref-43)
44. SRC Act; s 54(4)(b) The Bureau is the “*Entity*” to which Comcare must give a copy of the claim because it has been established as an Executive Agency under s 65 of the *Public Service Act 1999* (PS Act) and so is an “*Agency*” within the meaning of s 7 of that Act. Therefore, it is an Entity under the SRC Act: paragraph (a) of the definition of “*Entity*”; SRC Act; s 4(1). It is also an Entity within paragraph (c) of the definition of that term in s 4(1) of the SRC Act as it has been prescribed by r 16; Item 4 of Schedule 4 of the *Safety, Rehabilitation and Compensation Regulations 2002* (SRC Regulations) made for the purposes of the definition. [↑](#footnote-ref-44)
45. SRC Act; s 59(1) [↑](#footnote-ref-45)
46. The “*determining authority*” is the person who made the determination: SRC Act; s 60(1). In practice, the determining authority would seem to be a reference to either Comcare or a licensee, rather than to an individual acting on delegated authority, for two reasons. First, although either is a “*person*” within the meaning of s 2C of the *Acts Interpretation Act 1901*, s 62(2A) refers to situations in which “*… a determining authority holds a licence under Part VIII …*”. Under Part VIII, a licence may only be granted to a Commonwealth authority or to eligible corporations but not to individuals. [↑](#footnote-ref-46)
47. The SRC Regulations do not appear to prescribe a period for the purposes of s 61(1A). [↑](#footnote-ref-47)
48. SRC Act; s 60(1) A decision made under s 38(4) on review of a determination made by a rehabilitation authority. [↑](#footnote-ref-48)
49. SRC Act; s 64 [↑](#footnote-ref-49)
50. s 25C. Similar provisions appear in a range of legislation including the *Bankruptcy Act 1966* (s 64ZF), *Administrative Decisions (Judicial Review) Act 1977* (s 11(9)), *Insurance Act 1973* (s 130) and *Shipping Registration Act 1981* (s 3(1); definition of “*work agreement*”). [↑](#footnote-ref-50)
51. (1963) 4 FLR 380; Spicer CJ, Dunphy and Eggleston JJ [↑](#footnote-ref-51)
52. (1963) 4 FLR 380 at 382 [↑](#footnote-ref-52)
53. (1963) 4 FLR 380 at 383 [↑](#footnote-ref-53)
54. (1963) 4 FLR 380 at 382 [↑](#footnote-ref-54)
55. [1914] HCA 6; (1914) 17 CLR 457 [↑](#footnote-ref-55)
56. [1914] HCA 6; (1914) 17 CLR 457 at 466 [↑](#footnote-ref-56)
57. [1914] HCA 6; (1914) 17 CLR 457 at 465 [↑](#footnote-ref-57)
58. [2001] FCA 1656; (2001) 116 FCR 496; 67 ALD 330 Black CJ, Drummond and RD Nicholson JJ [↑](#footnote-ref-58)
59. [2001] FCA 1656; (2001) 116 FCR 496 at [19]; 499 [↑](#footnote-ref-59)
60. [2001] FCA 273; Katz J [↑](#footnote-ref-60)
61. [2001] FCA 273 at [22] [↑](#footnote-ref-61)
62. [2001] FCA 273 at [24] [↑](#footnote-ref-62)
63. [2002] FCAFC 189; (2002) 189 ALR 566; 69 ALD 634; French, Lindgren and Stone JJ [↑](#footnote-ref-63)
64. AI Act; s 25C cited at [2002] FCAFC 189; (2002) 189 ALR 566; 69 ALD 634 at [36]; 573; 641 [↑](#footnote-ref-64)
65. [2002] FCAFC 189; (2002) 189 ALR 566; 69 ALD 634 at [42]; 574; 642 [↑](#footnote-ref-65)
66. [2006] FCAFC 66; (2006) 150 FCR 584; 231 ALR 398; French, Stone and Siopsis JJ [↑](#footnote-ref-66)
67. [2006] FCAFC 66; (2006) 150 FCR 584; 231 ALR 398 at [46]; 595; 408-409 [↑](#footnote-ref-67)
68. [2006] FCAFC 66; (2006) 150 FCR 584; 231 ALR 398 at [47]; 595; 409 [↑](#footnote-ref-68)
69. [2012] FCAFC 27; (2012) 201 FCR 1; 126 ALD 78; Rares, Cowdroy and Jessup JJ [↑](#footnote-ref-69)
70. Migration Act; s 347(1)(a) [↑](#footnote-ref-70)
71. Migration Act; s 348(1) [↑](#footnote-ref-71)
72. [2012] FCAFC 27; (2012) 201 FCR 1; 126 ALD 78 at [31]; 9; 86 [↑](#footnote-ref-72)
73. [2012] TASSC 71; Porter J [↑](#footnote-ref-73)
74. [2012] TASSC 71 at [36]; approved in *Kolundzic v Quickflex Constructions Pty Ltd* [2014] NSWSC 1523 at [27] per Campbell J [↑](#footnote-ref-74)
75. [2007] FCA 575; (2007) 45 AAR 270 [↑](#footnote-ref-75)
76. [2007] FCA 575; (2007) 45 AAR 270 at [46]; 280 [↑](#footnote-ref-76)
77. [1979] FCA 21; (1979) 24 ALR 307; 41 FLR 338; 2 ALD 1; Bowen CJ and Smithers J; Deane J dissenting [↑](#footnote-ref-77)
78. [1979] FCA 84; (1979) 43 FLR 9; 28 ALR 551; 2 ALD 711; Smithers, Franki and Keely JJ [↑](#footnote-ref-78)
79. [1979] FCA 21; (1979) 24 ALR 307; 41 FLR 338; 2 ALD 1 at [23]; 317; 346; 7 [↑](#footnote-ref-79)
80. [1999] FCA 753; (1999) 56 ALD 84; 29 AAR 350; Wilcox, Branson and Tamberlin JJ [↑](#footnote-ref-80)
81. [2009] FCAFC 33; (2009) 174 FCR 574; 107 ALD 253; Downes, Greenwood and Tracey JJ [↑](#footnote-ref-81)
82. [2009] FCAFC 33; (2009) 174 FCR 574; 107 ALD 253 at [26]; 580; 258-259 [↑](#footnote-ref-82)
83. [2006] HCA 47; (2006) 226 CLR 535; 229 ALR 445; 80 ALJR 1578; 91 ALD 552; Gummow A-CJ, Kirby, Callinan, Heydon and Crennan JJ [↑](#footnote-ref-83)
84. [2006] HCA 47; (2006) 226 CLR 535; 229 ALR 445; 80 ALJR 1578; 91 ALD 552 at [10]; 540; 448; 1581; 555-556 [↑](#footnote-ref-84)
85. [2006] HCA 47; (2006) 226 CLR 535; 229 ALR 445; 80 ALJR 1578; 91 ALD 552 at [37]-[38]; 548-549; 455; 1586; 562-563 [↑](#footnote-ref-85)
86. The certificate need not be in the form approved by Comcare provided there is substantial compliance: SRC Act; s 54(5). [↑](#footnote-ref-86)
87. SRC Act; s 54(1) [↑](#footnote-ref-87)
88. [2006] FCA 1829; (2006) 93 ALD 147 [↑](#footnote-ref-88)
89. [2006] FCA 1829; (2006) 93 ALD 147 at [18]; 152 [↑](#footnote-ref-89)
90. [2006] FCA 1829; (2006) 93 ALD 147 at [20]; 153 [↑](#footnote-ref-90)
91. [2006] FCA 1829; (2006) 93 ALD 147 at [23]; 153 [↑](#footnote-ref-91)
92. [2007] FCA 575; (2007) 45 AAR 270 [↑](#footnote-ref-92)
93. SRC Act; ss 4(1) and 5A [↑](#footnote-ref-93)
94. [2007] FCA 575; (2007) 45 AAR 270 at [30]; 277 [↑](#footnote-ref-94)
95. [2007] FCA 575; (2007) 45 AAR 270 at [37]; 279 [↑](#footnote-ref-95)
96. [2007] FCA 575; (2007) 45 AAR 270 at [44]-[47]; 280 [↑](#footnote-ref-96)
97. *Re Buhr and Comcare* [2006] AATA 93; Senior Member Hunt [↑](#footnote-ref-97)
98. [2006] AATA 93 at [21] [↑](#footnote-ref-98)
99. [2006] AATA 93 at [19] [↑](#footnote-ref-99)
100. [2008] AATA 553; (2008) 106 ALD 143; Deputy President Jarvis and Dr Reilly, Member [↑](#footnote-ref-100)
101. [2008] AATA 553; (2008) 106 ALD 143 at [37]; 153 [↑](#footnote-ref-101)
102. [2009] FCAFC 146; (2009) 113 ALD 58; 50 AAR 505; Mansfield, Buchanan and McKerracher JJ [↑](#footnote-ref-102)
103. [2009] FCAFC 146; (2009) 113 ALD 58; 50 AAR 505 at [23]; 64; 510 [↑](#footnote-ref-103)
104. [2009] FCAFC 146; (2009) 113 ALD 58; 50 AAR 505 at [7]; 59; 507 [↑](#footnote-ref-104)
105. [2011] AATA 802; (2011) 124 ALD 136 [↑](#footnote-ref-105)
106. [2011] AATA 802; (2011) 124 ALD 136 at [51]-[52]; 145 [↑](#footnote-ref-106)
107. [2011] AATA 802; (2011) 124 ALD 136 at [60]; 147 [↑](#footnote-ref-107)
108. [2011] AATA 802; (2011) 124 ALD 136 at [57]; 146 Jagot J noted that there was no mention of any specific diagnosis or condition in Mr Durham’s notice of injury or claim. [↑](#footnote-ref-108)
109. [2012] FCAFC 129; (2012) 58 AAR 152; Emmett, Bennett and Greenwood JJ [↑](#footnote-ref-109)
110. [2012] FCAFC 129; (2012) 58 AAR 152 at [42]; 162 [↑](#footnote-ref-110)
111. [2012] FCAFC 129; (2012) 58 AAR 152 at [52]; 167 [↑](#footnote-ref-111)
112. [2012] FCAFC 129; (2012) 58 AAR 152 at [51]; 167 [↑](#footnote-ref-112)
113. [2012] FCAFC 129; (2012) 58 AAR 152 at [61]; 169 [↑](#footnote-ref-113)
114. [2013] FCA 27; (2013) 209 FCR 558; 299 ALR 346; 59 AAR 143; 133 ALD 339; Rares J [↑](#footnote-ref-114)
115. [2013] FCA 27; (2013) 209 FCR 558; 299 ALR 346; 59 AAR 143; 133 ALD 339 at [52]; 571-572; 360; 157; 352 [↑](#footnote-ref-115)
116. See [70] above [↑](#footnote-ref-116)
117. *Abrahams* [2006] FCA 1829; (2006) 93 ALD 147 at [20]; 153 per Madgwick J I note that the form approved by Comcare for the purposes of s 54(2)(a) asks a claimant to “*Quote the precise diagnosis as stated on the medical certificate.*” when responding to the question: “*For what injury or illness are you claiming workers’ compensation?*” The following question, Question 12, as “*What part(s) of your body has been most affected by your injury or illness? For example: right knee, upper left arm, lower back, neck, respiratory system, mental state.*” It is apparent from the authorities to which I have referred that regard may be had to the answers to both questions in order to determine the scope of the claim. [↑](#footnote-ref-117)
118. *Sellick* [2009] FCAFC 146; (2009) 113 ALD 58; 50 AAR 505; 113 ALD 58 at [23]; 510; 59 per Buchanan J [↑](#footnote-ref-118)