



**GALBALLY|&|O'BRYAN**

Lawyers

## **ComCare Claims - Injury Compensation**

A simple guide to entitlements

### **Commonwealth Employees Compensation Claims**

If you are injured while employed by the Commonwealth Government or a company licenced to operate under the ComCare scheme, then you are entitled to compensation under the Safety, Rehabilitation & Compensation Act.

Compensation is payable for physical injuries, psychiatric injuries or any disease or medical condition (including cancers, strokes and heart conditions) caused or contributed to by work.

Compensation coverage extends to injuries sustained when travelling to or from work or performing a work activity away from your place of employment.

If you have sustained a permanent injury you may be entitled to substantial lump sum compensation.

**To obtain expert advice from one of our lawyers telephone 9200 2533 or arrange a free first appointment.**



## How to Claim

1. Notice of injury must be given in writing to your employer as soon as possible after you become aware of the injury.
2. If you wish to claim weekly payments of compensation for time off work and/or payment of your medical expenses, you must complete a ComCare claim form, which can be obtained by telephoning the ComCare General Enquiry Line on 1300 366 979 or from [www.comcare.gov.au](http://www.comcare.gov.au).
3. The claim must be accompanied by a ComCare medical certificate, provided by your doctor, certifying incapacity if you are claiming weekly payments for time off work.
4. The insurer will generally respond to the claim within 4-6 weeks although there is no time limit within which they must make a decision.

## What Benefits does ComCare pay?

### Weekly payments for time off work

1. For the first 45 weeks you are entitled to be paid your normal earnings, which in certain circumstances may include shift allowance and overtime, less any amount that you are able to earn in suitable employment.
2. After 45 weeks the insurer pays 75% of your pre-injury earnings if you are totally incapacitated. If you are partially incapacitated a prescribed formula applies whereby the weekly payment to compensate for those hours not worked is gradually increased as you increase your hours of work.
3. You must accept offers of suitable employment and participate in reasonable rehabilitation, vocational and retraining programs. Failure to do so can result in a reduction or termination of weekly payments.
4. Weekly payments must not exceed 150% of average weekly ordinary time earnings for full time adults as published by the Australian Bureau of Statistics. Similarly, payments cannot be made below a certain figure.

5. Weekly payments will be reduced under a prescribed formula if you retire and receive a pension and/or a lump sum benefit under a superannuation scheme.

### **Hospital, Medical and like expense benefits**

1. The insurer is liable to pay the reasonable costs of medical, dental, surgical, hospital, nursing and therapeutic treatment (including physiotherapy, osteopathy, massage and chiropractic). It is also liable to cover expenses for medication, travel (where the round trip exceeds 50 kilometres) and provision (in prescribed circumstances) of household services and attendant care.
2. In certain circumstances the insurer will also pay for alterations to the employee's residence or motor vehicle and for the provision and/or replacement of aids and appliances.

### **Lump Sum Compensation**

1. Lump sum compensation is payable where the injury causes a degree of impairment of 10% or more.
2. If the injury causes the loss of a finger or toe or loss of the sense of taste or smell, lump sum compensation is available even if impairment is less than 10%.
3. Where an impairment entitlement exists, additional compensation is payable for non economic loss (pain and suffering) under a Statutory formula.
4. A claim cannot be made until the injury has stabilised, although there is a provision to apply for an interim impairment award in certain circumstances.
5. Once the insurer has made a final assessment of the degree of permanent impairment, no further amounts of compensation are payable in respect of any subsequent increase in the degree of impairment, unless the increase is 10% or more.
6. Payment of lump sum compensation for permanent impairment does not affect your entitlement to weekly payments or payment of medical and like expenses.

## **Can I sue my employer for compensation (damages)?**

1. You can sue your employer if their negligence caused your injury and your impairment is determined at 10% or more. After your impairment is assessed you can choose to accept the permanent impairment payment or to sue your employer for pain and suffering damages to a maximum of \$110,000.00. Your choice cannot be altered once made.
2. You cannot sue for loss of earnings.
3. A common law settlement against your employer does not affect the insurer's ongoing liability to pay your medical and like expenses and weekly payments for incapacity.

## **Can I sue a third party for compensation (damages)?**

1. If injured due to the negligence of a third party (i.e. not your employer) you may be entitled to sue for compensation provided you notify the ComCare insurer. For example, if you sustained serious injury in a car accident on your way to work you may be entitled to compensation under the Safety, Rehabilitation and Compensation Act and also have the right to sue the negligent driver.
2. If damages are recovered against a third party compensation benefits paid by ComCare are refundable and furthermore, ComCare has no ongoing liability, subject to certain exceptions, to pay compensation to you under the Safety, Rehabilitation and Compensation Act.

## **What are my rights if the insurer makes a decision which I dispute?**

1. You must write to the insurer requesting a reconsideration of the decision within 30 days from the date you became aware of it. The insurer has a discretion to extend this period in certain circumstances. The insurer's decision on reconsideration is known as a reviewable decision.
2. If you dispute the reviewable decision you have 60 days to lodge an appeal with the Commonwealth Administrative Appeals Tribunal. This time limit can be extended in certain circumstances.

If the insurer makes a decision which you dispute Galbally & O'Bryan can help you.

## How can Galbally & O'Bryan help?

**We aim to help you obtain proper and just compensation by:**

- Advising on your rights and entitlements.
- Obtaining medical reports from doctors as needed so you get paid appropriate benefits.
- Reviewing decisions of the Insurer on your claim and helping you dispute any incorrect decisions.
- Applying to the Insurer for an impairment lump sum benefit.
- Advising and if appropriate claiming common law damages.

## We offer

- “No win-no charge” arrangements in most injury compensation cases, the details of we would explain and set out in writing.
- Free telephone advice and free first consultation at either:

### **Melbourne office:**

259 William Street Melbourne VIC 3000

Phone: (03) 9200 2533

### **Dandenong office:**

Shop Shop Nine 147 - 151 Foster Street Dandenong VIC 3175

Phone: (03) 9769 2510

### **Pakenham office:**

Shop Shop One 15 John Street Pakenham VIC 3810

Phone: (03) 5941 7990



## Legal services – our areas of expertise

Galbally & O'Bryan is a legal firm which was founded in 1935. Located in Melbourne and Dandenong we provide comprehensive legal services in the following areas:

### **Injury compensation claims including:**

- Workcover
- TAC
- Medical negligence
- Defective products
- Accidents in a public place or on private property
- ComCare claims
- Superannuation and disability insurance claims

### **Wills and probate including:**

- Challenging a Will
- Making a Will
- Probate and estate administration
- Estate planning

**Criminal law** - defence of police charges

**Family law** - marriage and de facto relationships, divorce, property and financial settlements, children and parenting issues

**Employment matters** - employment contracts, termination of employment, redundancy, discrimination

**Property law** - leasing, buying and selling a property or business

### **Commercial litigation/dispute resolution -**

commercial and contractual disputes, debt recovery, property disputes, general and professional negligence claims.

## For more information

visit [www.galballyobryan.com.au](http://www.galballyobryan.com.au)

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