



Customer Circular

instant access to the *latest* information

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Access to information under section 59 of the *Safety, Rehabilitation and Compensation Act 1998*

Purpose

The purpose of the Circular is to provide details of Comcare's policy on the release of information requested under section 59 of the Safety, Rehabilitation and Compensation Act 1998 (SRC Act).

Background

Paragraph 59(1)(a) of the SRC Act states:

"A relevant authority shall:

(a) on request by a claimant - give to the claimant any document held by the authority, (e.g. Comcare), that relates to the claimant's claim;"

Paragraphs 59(1)(b) and (c) of the SRC Act confer similar rights on the Commonwealth, Commonwealth authorities and licensed corporations, to request documents held by Comcare relating to a claim that affects them.

Also, although not covered by section 59 of the SRC Act, the Ombudsman's Office has extensive powers, under the Ombudsman Act 1976, to request and be provided with claimant information, including that which is kept on Comcare's files.

N.B. Further references in this Circular to "section 59" are references to section 59 of the SRC Act.

Comcare's procedure for requests for 'documents' from claimants

All requests, from claimants, for documents under section 59 should be made in writing. This ensures that there is no dispute:

- over the terms of the request; and
- that the person requesting the documents is:
 - the claimant to whom the documents relate; or
 - the claimant's authorised representative.

Also, to prevent any breaches of the Privacy Act 1988, Comcare requires identification in the form of:

- the claimant's claim number and/or signature; and
- some other form of identification which positively identifies the claimant as being who he/she claims to be.

What Comcare may provide under section 59

A request for 'any documents held by the authority, (e.g. Comcare), that relates to the claimant's claim', may also include records stored electronically.

Comcare also has a policy to provide a claimant with certain material held by Comcare which relates to operational issues but which is not necessarily held on the claimant's file if:

- the claimant has specifically requested that material; or
- the claimant has referred to it in such a way as to make it clear that this is what they are requesting.

An example of this might be where a claimant requests documents on Comcare's policy on aids and appliances. As a result, he/she might be provided with a copy of Comcare's internal policy advice on section 39 of the SRC Act.

However, Comcare's view is that requests from claimants for longer documents, which are:

- not on the claimant's file; or
- not related to the claimant's claim; or
- publicly available through other sources and can be easily purchased or otherwise obtained,

do not have to be met.

If Comcare does not provide the publicly available material then the claimant will be advised where he/she can obtain that information.

Relationship between section 59 and the Freedom of Information Act 1982 (FOI Act)

Claimants may make requests under either section 59 and/or the provisions of the FOI Act.

The main differences between section 59 and the FOI Act are that:

- there is no requirement under the FOI Act for the person requesting the information to have a personal interest in it; and
- requesting documents and providing them under the FOI Act is a more formal process.

If the claimant makes a request for documents relating to their claim, without stipulating under what legislation the request is being made, then it will generally be actioned under the terms of section 59.

There is no fee for requests made under section 59. For requests made under the FOI Act there is a fee, which is currently \$30.

If a claimant makes a request under section 59, and a request under the FOI Act, then the parts of the request which relate to section 59 will be actioned under that section and the remainder will be referred to the relevant Comcare FOI Contact officer. The claimant will be informed of this procedure.

Time frame for actioning section 59 requests

- if the request is for one or two documents that are held on the claim file then a response should normally be provided within 5 days;
- if the request is for the entire file and/or other material, or where legal advice needs to be sought, then a response should normally be provided within 28 days. If the information cannot be provided within 28 days then Comcare will advise the person who made the request.

Documents protected from release

There are some documents that could be protected from release under section 59. These include:

- information protected by Legal Professional Privilege;
- information on Comcare's fraud investigations files; and/or

- medical reports containing information which, in Comcare's opinion, if released, could cause the claimant or a third party harm.

Release of information to employers

Paragraphs 59(1)(b) and (c) of the SRC Act provide that employers (i.e. the Commonwealth or a licensed corporation) also have the right to request, and be provided with by Comcare, information relating to a claim.

This only extends to documents relating to the claim in question. Generally documents will not be provided to one department which relate to a separate claim involving another department, as, in most situations, those documents would not be relevant.

Where a claimant has advised Comcare that they do not want documents held on their file provided to a particular person in their agency, for example a manager or a supervisor, the documents will not be provided to that person.

The relevant documents can still be provided to the employer but it would be provided through an independent person such as the Human Resource Manager (or, if necessary, the Secretary, CEO etc) and the claimant's objections regarding the release of the documents would be stated clearly to that person.

Further information

If you would like more information on this topic please call Comcare's Help Line on 1800 150 555 (Freecall) or your local Claims Manager:

NSW	(02) 9550 8777
VIC	(03) 9652 3555
QLD	(07) 3233 1311
WA	(08) 9480 1444
SA/NT	(08) 8224 1600
TAS	(03) 6223 1366
ACT	(02) 6276 0333

Stress Claims Management Centre

1800 683 402