

Safety, Rehabilitation and Compensation Act 1988
SECTION 73A

SETTLEMENT GUIDELINES

The Safety, Rehabilitation and Compensation Commission ('Commission') issues the guidelines set out below under section 73A of the *Safety, Rehabilitation and Compensation Act 1988* ('SRC Act'). The guidelines have been developed by the Commission in consultation with Comcare, licensed authorities and licensed corporations ('determining authorities'), unions representing claimants' interests and the Administrative Appeals Tribunal ('AAT') and apply on and from 1 January 2002.

These Guidelines govern all actions by determining authorities in settling disputed claims which have been referred to the AAT for review. They relate to matters within the jurisdiction of the SRC Act that are settled with the consent of both parties (being the determining authority and the employee) and where the AAT proceeds to make a decision giving effect to the parties' agreement pursuant to section 42C of the *Administrative Appeals Tribunal Act 1975* ('AAT Act').

These Guidelines do not govern any settlements on other employment issues, which are not covered by the SRC Act, that determining authorities may be negotiating at the same time. In those cases the determining authorities may be acting as the employer or in conjunction with the employer.

-
1. In settling disputed claims determining authorities must act consistently with provisions of the SRC Act and the AAT Act.
 2. In attending conciliation conferences determining authorities should act in accordance with the AAT's *Conciliation Conferences Direction*. A copy of the direction can be found on the AAT's website at www.aat.gov.au.
 3. Determining authorities must act honestly, fairly and consistently as between claimants in negotiating settlements.
 4. Terms of settlements cannot reduce statutory entitlements below, nor increase them above, the amounts permitted or prescribed by the SRC Act.
 5. Terms of settlements cannot include terms purporting to prevent employees from pursuing rights available under the SRC Act, nor can they seek to allow determining authorities to contract out of any existing or future liabilities under the SRC Act.

6. Where it is clear that an employee has an entitlement under the SRC Act, the determining authority should consider, without unreasonable delay, settling the disputed claim.
7. Where an employee is not legally represented, the determining authority must explain to the employee the terms of the settlement and the consequences of agreeing to the settlement. The determining authority must not proceed to settle the claim if it is apparent to it that the terms of the proposed settlement or the known consequences of it are not properly understood by the employee.
8. The terms of settlement filed under section 42C of the AAT Act should only cover matters arising from the disputed entitlement(s) before the AAT under the application(s) for review and cannot include any matter that is outside the scope of the SRC Act. Agreement by the parties to terms of settlement filed under section 42C of the AAT Act is distinct from the employee's acceptance of any separate settlement dealing with employment issues. Any such separate settlement should be reflected in separate documentation.
9. Terms of settlement filed under section 42C of the AAT Act should record all pertinent facts as agreed, should indicate the relevant provisions under which any entitlements to compensation payments arise in the given circumstances and should specify all relevant amounts, for example, amounts for loss of earnings (incapacity), redemptions, permanent impairments and medical and travel expenses, as well as legal costs.
10. Implementation of the terms of settlement, as given effect by a decision of the AAT pursuant to section 42C of the AAT Act, should be promptly actioned by the determining authority.