



Australian Government

Comcare

Customer Circular

Issue 51 June 2005

ISSN 1832-8016

Centralisation of Asbestos Related Claims with Comcare

Purpose

- To advise agencies of Comcare's proposed new function in relation to asbestos-related conditions,
- To seek assistance in the transfer of any relevant files; and
- To advise agencies on the steps to be undertaken if a common law claim relating to an asbestos-related condition is lodged directly on your agency.

Background

It was announced in the May Budget (Attachment A) that the Employment and Workplace Relations portfolio would take over responsibility for all Commonwealth liability in relation to asbestos related conditions (ARC). The Department of Employment and Workplace Relations (DEWR) will have policy responsibility for ARC whilst **Comcare** will have the function of managing common law claims made against the Commonwealth (other than Defence claims) and Commonwealth authorities.

Although Comcare has previously had responsibility for employee (SRC Act) claims, and has paid for common law actions lodged by employees, this will be a totally new function. Comcare will not only manage and pay for all common law actions lodged by employees, but will also manage all ARC common law claims made by **non-employees**.

The centralised approach will help ensure consistency in management of the Commonwealth's asbestos-related conditions liabilities and offer a single point of contact for most statutory and common law claimants allowing more efficient and effective management of claims.

Common law asbestos claims against the Department of Defence will be exempt from the centralisation process for the time being, pending a review of the new arrangements.

An asbestos-related condition will be defined as asbestosis, an asbestos induced carcinoma, an asbestos-related non-malignant pleural disease, mesothelioma or any other condition that is caused by exposure to asbestos.

For Commonwealth departments, the aim is for management of asbestos claims to be undertaken by Comcare from 1 July 2005.

For Commonwealth authorities, it is expected that Comcare will commence management of these claims from late August, following passage of the relevant legislation.

Transfer of common law files — contacts

For Comcare there are two aspects in relation to file transfers.

Phase 1 — active claim files

Comcare needs to be advised of all active ARC files held by agencies, in order that it can be in a position to take over management of these files.

- Active (open or ongoing) claims
 - For Commonwealth departments - it is important that arrangements be made with Comcare to transfer these claims so that Comcare is in a position to take over management on 1 July 2005.
 - For Commonwealth authorities - arrangements need to be made to transfer these files but physical transfer will take place after July.

Phase 2 — closed claim files

- Closed (finalised or historical) claims. These files may be transferred progressively and separate arrangements should be made with Comcare in relation to these files.

In addition the following files will need to be transferred:

All files and records containing research and /or evidentiary material relating to asbestos in the Commonwealth jurisdiction held by your agency.

- All files and records relating to admissions in courts and tribunals about the Commonwealth's asbestos liabilities.
- All files and records relating to the employment of persons exposed to asbestos in the Commonwealth jurisdiction.
- All files and records relating to the exposure of any persons to asbestos in the Commonwealth jurisdiction. This includes information about asbestos in buildings constructed and occupied by the Commonwealth.
- All files and records relating to assessment of future liabilities concerning asbestos conditions.

Given the long latency of some asbestos conditions, file indexes to relevant material in the National Australian Archives.

Attachment B gives some general information from Australian Archives relating to file transfers.

Commonwealth departments — Finalisation of Accounts as at 30 June 2005

For any active cases, you should also arrange for the finalisation of all relevant invoices as at 30 June 2005. In particular you should request any law firms which are presently assisting with an asbestos claim to provide an invoice, whether or not the claim is completed on 30 June.

Contacts

Would you please nominate a contact officer, who should contact Mr Ken Whitcombe, phone (02) 6275 0099, email agalu@comcare.gov.au

IF YOUR AGENCY RECEIVES A COMMON LAW CLAIM FOR AN ASBESTOS-RELATED CONDITION

With the commencement of centralisation of all ARC common law claims in Comcare as from 1 July 2005 it is important that if your agency receives a Statement of Claim that it is passed to Comcare **AS SOON AS POSSIBLE**.

By the nature of some ARCs, the life expectancy of the individual may be very short and courts in this case may provide an expedited process. Accordingly it is paramount that these Statements of Claim are passed quickly to Comcare.

Accordingly, in the first instance the Statement of Claim should be faxed to: (02) 6274 8521 with the original then sent to Comcare through normal mail.

Contact Person

When sending the Statement of Claim, please also provide a contact name and number, should Comcare need to obtain any information in relation to the matter.

If the Statement of Claim was served on the AGS or another firm of solicitors please indicate this when notifying Comcare.

Employee Claims under the Safety, Rehabilitation and Compensation Act 1988 (SRC Act)

Workers' compensation claims from employees for statutory benefits under the SRC Act for ARC will continue to be managed by Comcare as per standard claims management procedures. There is no change in relation to these matters.

The changes outlined above relate only to common law cases.

**THE HON KEVIN ANDREWS MP
MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS
MINISTER ASSISTING THE PRIME MINISTER FOR THE PUBLIC SERVICE**

BUDGET 2005 MEDIA RELEASE

Tuesday, 10 May 2005

MEDIA inquiries: Russ Street (Media Adviser) 0417 044 712

**AUSTRALIAN GOVERNMENT CENTRALISES ASBESTOS
CLAIMS**

The Minister for Employment and Workplace Relations, Kevin Andrews today announced that asbestos-related personal injury claims against the Australian Government will be managed by a centralised claims and records management unit within Comcare from 1 July 2005.

The Department of Employment and Workplace Relations will also assume overall policy responsibility to ensure consistency in management of the Australian Government's asbestos related disease liabilities.

Asbestos claims against the Department of Defence and claims made by former Australian Defence Force members and their dependants under the Military Compensation and Rehabilitation Scheme and the Veterans' Entitlements Act will be exempt from the centralisation arrangements in the first instance, subject to a review within twelve months.

The centralisation of asbestos claims will provide a more streamlined approach for families suffering asbestos-related conditions by offering a single point of contact. It will also lead to more consistent decision-making and more equitable and efficient outcomes.

<http://www.dewr.gov.au/publications/budget/2005/mediaRelease/Media%20Release%20-%20Asbestos.pdf>

Archives Advice 27

HANDLING ADMINISTRATIVE CHANGE

Issued December 1998/Revised June 2002

Types of administrative change

An 'admin change' refers to a change in the administration of government functions. When an administrative change involves transfer of function from one agency to another, transfer of whole agencies from one portfolio to another, or when functions are privatised, records relating to those functions need to go to the agency that will be doing the work. This means that agencies will need to relinquish control and transfer records to other agencies.

The basic principle to remember is that the records relating to a function should be available to the agency which inherits responsibility for the administration of that function (i.e. records follow function).

If the records are maintained in automated systems, formal arrangements regarding access, security, compatibility and servicing contracts have to be agreed to between the gaining and losing agencies. This could be as simple as handing over magnetic tapes or optical disks. If there is no compatibility between the systems of the respective agencies it could be very complicated. The losing agency may even have to provide a contractual service to the inheriting agency to maintain the automated system.

What to do if your agency is losing function(s)

1. Identify the records that relate to the function. If the records are part of the general recordkeeping series, search the indexes and consult action officers to identify records for transfer to the inheriting agency. If the records are maintained separately from the general recordkeeping series, pass the records and their control records in their entirety to the inheriting agency.
2. Consider the control records. If the record series is handed over in its entirety, indexes and any other control records should also be handed over. If only part of the record series is handed over, do not divide indexes or control records. Instead, give the inheriting agency a copy of the relevant parts of the index. Make sure you annotate your control records to show movement of the records.
3. List the record types to be handed over to the inheriting agency. Where necessary, list individual record items for accountability purposes.
4. Provide the agency which is inheriting the function with:
 - a. copies of National Archives of Australia accession documentation for records in the Archives' custody or in the custody of a service provider;
 - b. copies of any disposal authorities which relate to the transferred records; and
 - c. any details of charges imposed by the Archives or a service provider for which the inheriting agency now takes responsibility. This includes statements of outstanding debts. Make arrangements for splitting accounts that may occur midway through a billing or account cycle.
5. Contact the inheriting agency to arrange for the physical transfer of the records.

6. Transfer to the Archives any sentenced archival records no longer required for current use. This especially applies if there is a residue of Commonwealth records after a function has moved to private enterprise or another government, or if the records relate to a terminated or substantially reduced function.

What to do if your agency is inheriting function(s)

1. Contact the losing agency to discuss arrangements for transfer, and where appropriate, movement of staff (staff often follow function).
2. Check the records actually received for completeness against the lists supplied by the losing agency.
3. Decide on recordkeeping arrangements for continuing administration of the new function, especially if the records are automated.
4. Retain the records in their original series, if possible. Records should not be top numbered into current or new series as the original context of the records will be changed. Ensure that you can retrieve records by reference to the control records supplied.
5. Ask the losing agency if they have records with the Archives or other service providers, and, if so, ensure you receive the relevant documentation, including information about charges, contracts and outstanding debts for which you may have to take responsibility. Any splitting of accounts between the agencies has to be agreed to.

Access/lending service

Where categories of records are needed by both losing and inheriting agencies, a decision has to be made on whether special arrangements for access are required or whether there should be duplication of the relevant portions of records. Transferring non-current records of archival value to the Archives will mean that they can be made available through our Lending Service to both agencies on an agreed basis. This is preferable to splitting the series or extensive copying.

<http://www.naa.gov.au/recordkeeping/rkpubs/advices/advice27.html>