



Australian Government

Comcare

GUIDE FOR SUBMISSION OF EMPLOYER STATEMENTS

PURPOSE

In deciding a claim for workers' compensation, Comcare gathers information from an employee making a claim, his or her employer, treating doctors and in some cases, independent medical examiners.

It is the employer's role to gather information from other relevant people. This can include witnesses, supervisors or other employees who may be able to provide information.

This guide provides information to employers about providing an employer statement. Guidance for employees about how Comcare determines liability for a claim can be found on [Comcare's website](#).

WHY SUBMIT AN EMPLOYER STATEMENT?

The need for and the extent of any statement or information is a matter for the employer's judgment. Some claims are relatively straightforward—for example, a slip or trip sustained at work, reported to an employer and for which medical treatment was obtained immediately. In that case, all that will usually be required is the completed claim form and medical evidence.

Some claims are more complex, such as a claim for psychological injury—often developed over time and may involve allegations of bullying or harassment. It may not be entirely clear when the injury occurred and what employment factors may have caused or contributed to the injury. In this case, a statement of facts may help Comcare make a decision. Where information provided raises work health and safety concerns, it may be referred to Comcare's Regulatory Services Group.

Comcare also has the power—under section 71 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act)—to obtain documents and information from an employer. The timely provision of a statement of facts and relevant supporting information in response to a section 71 request is essential to enable the timely and accurate determination of the claim.

It is important to note that once the employer has submitted a statement of facts, this forms part of the claim file, and will be released to the employee under section 59 of the SRC Act. In the course of determining a claim, information submitted by the employer is provided to the employee in accordance with principles of natural justice. This provides the employee an opportunity to respond to any adverse statements. The same opportunity is afforded to the employer in relation to information provided by the employee.

Experience tells us that information contained within an employer's statement can be confronting and distressing, especially if the employee suffers from a psychological injury. The employee may require support from a medical or health care provider and case manager when reading an employer statement. Information must be relevant, factual, objective and supported by documentary evidence wherever possible. Claim Services Officers will work with case managers to support the employee while liability is determined.



WHEN SHOULD AN EMPLOYER STATEMENT BE SUBMITTED?

Submitting an employer statement should not delay early lodgement of a claim. Where the employer wishes to provide a statement but needs time to complete it, they should note this at the relevant section of the claim form and lodge the claim with Comcare as soon as possible after receiving it from the employee. For injury and disease claims, a statement and/or supporting documentation should be submitted together with the claim form wherever possible. For psychological injuries, Comcare may initially request further information from the employee to establish the factors that led to the development of the condition. This information will then be provided to an employer and an employer will be given an opportunity to respond.

The claim form does not ask the employer whether or not they support the claim. Where no statement is provided by the employer in relation to any aspect of the claim, the position taken by Comcare in determining the claim is that the facts as detailed by the employee are 'not disputed' by the employer. This may also apply to particular assertions/allegations made within the employee's statement. It is therefore important that assertions/allegations are assessed by the employer in deciding whether or not to lodge a statement of facts in relation to the claim. The employer should take action to assist the injured employee to stay at work or return to work quickly and safely as soon as they become aware that the employee has suffered an injury. The employer should take this action whether or not the employee's injury is work related, and without waiting for a decision on liability by Comcare. There are costs for both the employer and employee associated with any absence from work.

The case manager who is supporting the injured employee to stay at work or return to work should not be involved in submitting a statement of facts. This may result in conflict if the statement of facts does not support the injured employee's version of events.

WHAT SHOULD BE INCLUDED IN A STATEMENT OF FACTS?

A statement of facts can be in any written form and must include relevant supporting information and documentation. A suggested template is available at Attachment A of this document. A Microsoft Word document of the same template can be found on the [Comcare website](#).

What is relevant will depend on what the employee has described in the claim form and any supporting statement or documentation. Comcare can only take into account information and events which occurred before the date of injury provided by the employee and supported by medical evidence.

It is very important for the employer to create and retain proper records in relation to administrative actions concerning a person's employment. Failure to provide documentary evidence may lead to unfairness and difficulty establishing the facts.

A statement of facts should:

- > contain factual and objective information (rather than conjecture, hearsay, or emotive opinion) and related dates—a chronology summarising relevant dates and events is helpful supported by documentary evidence
- > include records such as notes of meetings, incident report forms and witness statements —contemporaneous written records of events are crucial in determining the employee's claim
- > provide supporting documentation to assist Comcare in reaching a decision on the application of any exclusionary provisions—for example, a copy of the employer's performance management provisions in the case of claims relating to reasonable disciplinary action, details of relevant facts relating to 'benefits in connection with employment' or the failure to obtain those benefits, and so on
- > confirm whether or not the employee has been informed that the statement has been provided to Comcare—in accordance with principles of natural justice, the employee will be provided with a copy of information submitted by the employer

- > address any or all aspects of the employee’s statement including:
 - any history of the employee reporting similar symptoms or conditions, including a non-work related injury
 - whether or not the employee was at their normal workplace at the time when the claimed injury/illness arose and if not, an indication of where they were at the time—for example, working from home
 - whether or not the employee was at work or on a work related activity at the time the claimed injury/illness arose or on a journey to or from work—for example, travelling interstate for a training course
 - where the employee was on a journey between home and a place of work, any relevant details relating to the location where the accident occurred—for example, whether the employer ‘had control’ over the area where the accident occurred
 - information about whether there were other people from the same workplace who were similarly affected—especially in the case of a disease
 - details of the nature of the employee’s position such as main tasks performed, equipment used and the frequency of use, supervision and support provided, etc.

For complex claims, a statement of facts from the employer addressing these issues not only assists Comcare in its decision making, but also improves the employer’s understanding of the issues so they can support the injured employee in their return to work.

HOW WE DECIDE A CLAIM

Once a claim has been made, it is allocated to a Comcare Claim Services Officer to determine liability. We determine claims as quickly as possible and will contact both the employee and employer during the process. A statement of facts from the employee and employer can assist Comcare’s assessment of liability for a claim. In making a determination we will consider:

- > compliance
- > medical relationship
- > employment relationship
- > exclusionary provisions.

Compliance

The SRC Act requires that claims for compensation comply with certain conditions. The main requirements are that the claim:

- > is made by an ‘employee’ as defined in the Act (section 5)
- > substantially complies with the approved form (section 54)
- > is accompanied by a medical certificate (section 54).

Most decisions on employment status are straightforward, but it will assist Comcare to determine this aspect of the claim if the employer statement of facts confirms the employee’s employment status and the duration of employment. Whether any outside employment arrangements have been approved may also be relevant.

Medical relationship

Comcare must consider:

- > whether the claimed condition is related to the stated employment cause
- > whether the condition being claimed meets the relevant diagnostic test for that condition—for example, a psychological injury needs to be a condition outside the boundaries of normal mental functioning and behaviour
- > the date of injury in accordance with section 7(4) of the SRC Act.

Information that assists Comcare in determining whether the claimed condition is consistent with the stated employment cause is useful.

Employment relationship

Sections 4, 5A, 6 and 7 of the SRC Act require that compensation can only be paid for injuries that arise out of or in the course of employment, and for diseases (including psychological injury) where employment has contributed to a significant degree. It is not necessary for an employee to show that there was a special, unusual or wrongful factor that contributed to their condition. Nor must they establish that their employer breached any duty of care—it is sufficient that employment contributed to any injury or significantly to the development of a disease.

Exclusionary provisions

The legislation provides that injured employees are excluded from compensation, in cases of serious and wilful misconduct and for self-inflicted injuries. An example of serious and wilful misconduct might be driving while under the influence of alcohol or drugs. Other exclusions are set out below.

For claims with a date of injury on or after 13 April 2007

Compensation is not payable to injured employees if the injuries are:

- > the result of reasonable administrative action taken in a reasonable manner by the employer [section 5A(1), 5A(2)].
This will include:
 - a reasonable appraisal of the employee’s performance
 - a reasonable counselling action (whether formal or informal) taken in respect of the employee’s employment
 - a reasonable suspension action in respect of the employee’s employment
 - a reasonable disciplinary action (whether formal or informal) taken in respect of the employee’s employment
 - anything reasonable done in connection with the employee’s failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment
- > caused by the employee’s serious and wilful misconduct [section 14(3)]
- > a disease where an employee has—for purposes connected with his or her employment or proposed employment by the Commonwealth or a licensed corporation—made a wilful and false representation that he or she did not suffer, or had not previously suffered, from that disease [section 7(7)]
- > subject to travel exclusions—to and from place of residence and usual place of work [section 6(1C)]
- > sustained where the employee voluntarily and unreasonably submitted to abnormal risk [section 6(3)].

For claims with a date of injury before 13 April 2007 (references to pre-amendment provisions)

Compensation is not payable to injured employees if the injuries are:

- > the result of reasonable disciplinary action [section 4(1)]
- > the result of failure to obtain a promotion, transfer or benefit [section 4(1)]
- > intentionally self-inflicted [section 14(2)]
- > caused by that employee's serious and wilful misconduct [section 14(3)]
- > the result of that employee making a false representation, connected with their employment, that they did not suffer from a disease [section 7(7)]
- > subject to travel exclusions—increased risk of injury [section 6(2)]
- > the result of the employee voluntarily and unreasonably submitting to abnormal risk [section 6(3)].

It is important to note that Comcare is not required to make a judgement about the outcome of any disciplinary action. Comcare must assess the reasonableness of disciplinary action on a case-by-case basis.

For a particular action to be reasonable, it must be lawful and attended by circumstances of fairness. The emotional state and psychological health of the employee are relevant considerations. Whether relevant policies and procedures were followed and the employee was afforded natural justice are also relevant. The reasonableness of an action is objectively assessed in the context of the circumstances and knowledge of those involved at the time.

PRIVACY

An employer holds a range of information relating to an employee including fitness for duty and other HR and medical information which should be held separately to any compensation claim file. Employers need to be mindful of obligations under the *Privacy Act 1988* and the purpose for which information was obtained. It is necessary to ensure that information disclosed falls within the scope of a request made under section 71 of the SRC Act. If the wording of the section 71 notice is not broad enough to capture relevant information, a further section 71 notice can be issued targeting the additional information.

ADDITIONAL INFORMATION

The Comcare website includes a range of materials for employers on managing employees with injuries. The following guides provide an overview on how Comcare determines claims for psychological injury and are worth considering when submitting a statement of facts for such claims:

- > *Psychological injury claims: How Comcare determines initial liability for claims with a date of injury before 13 April 2007*
- > *Psychological injury claims: How Comcare determines initial liability for claims with a date of injury on or after 13 April 2007*

For further information, please contact us on 1300 366 979 or complete this online form.

ATTACHMENT A

EMPLOYER STATEMENT TEMPLATE

[This document is designed to assist you to write an employer statement. Please copy and paste the below headings into your agency's letterhead and ensure you address each of the below headings in your statement.]

GENERAL

Claimed date of injury (if known)

Employee

Claimed condition

Claim number (if known)

BACKGROUND

Provide the information below leading up to the claimed onset of the condition:

- > Duties performed
- > Period of employment
- > Any time off work relevant to the claimed condition
- > History of the employee reporting similar symptoms or conditions, including non-work related incidents or occurrences (include dates)
- > Where was the employee at the time of the incident, e.g. working from home
- > Any disciplinary action undertaken whether formal or informal e.g. administrative action
- > Any other factors (work or non-work related) affecting the employee's health

EMPLOYEE STATEMENT

Discuss/respond to the events/issues raised in the employee's statement and the actions taken.

HISTORY

Please provide related dates and events leading up to the onset of the condition. The following table format may be used to capture the relevant information.

| Date | Action/event | Supporting documents |
|------|--------------|----------------------|
| | | |
| | | |

COMPLETED BY

| | |
|-----------|------|
| Name | |
| Position | |
| Signature | Date |

ATTACHMENTS

List all attachments provided

The following is a list of relevant documentations (please note this is not a conclusive list):

- > Supervisor/team leader statement
- > Witness statement
- > Position description
- > Incident report
- > Emails
- > Relevant sections of policies (please provide an explanation of how it has been applied)
- > Fitness for Duty reports
- > s36/Initial Needs Assessment report
- > Meeting minutes

WHAT NEXT

Please send the completed s71 employer statement of facts within 14 days of request or as agreed with Comcare to general.enquiries@comcare.gov.au or via fax to 1300 196 971.

PLEASE NOTE

Please only provide information and documents relevant to the claim. Embedded documents as part of your submission are not able to be received. Emails larger than 14MB will need to be posted to:

Comcare
GPO Box 9905
CANBERRA ACT 2601

ATTACHMENT B

WITNESS STATEMENTS (TEMPLATE)

To: *(insert name of relevant witness eg. supervisor)*

Date:

Subject: Employer statement of facts in response to a worker's compensation claim by *(insert name of the employee)*

Background

(Insert title and name of employee claiming compensation) has lodged a claim for workers' compensation for *(insert details from claim form)* which *(he/she)* attributes to *(insert details from claim form)*.

(Insert title and name) has also stated *(insert statement)*.

(Insert title and name) is claiming *(insert period)* total incapacity for work for the period *(insert dates absent from work which may be relevant to date of injury)*.

Statement and supporting documents requested

In determining liability for *(insert title and name)*'s claim, Comcare will consider the information submitted by *(insert title and name)*, the exclusionary provisions of the *Safety Rehabilitation and Compensation Act 1988*, medical evidence and the employer's statement in response to the claim.

It has been determined that you may be able to provide evidence relevant to Comcare's consideration of the claim. You are requested to provide a statement responding to the matters summarised above in relation to *(insert title and name)*'s claim.

A guide to preparing your statement is provided at Attachment A. Please note that Comcare will generally provide an employee with a copy of all witness statements and documents, and an opportunity to respond, prior to making a determination.

Would you please forward the statement to the *(insert area)* for submission to Comcare.

Please contact me on 1300 366 979 if you require further time to complete the statement or if you require further information.

ATTACHMENT C

WORKERS' COMPENSATION CLAIM—REQUEST FOR STATEMENT

A statement should:

- > contain factual and objective information (rather than conjecture, hearsay, or emotive opinion) and relevant dates addressing employment issues identified as causing or contributing to an injury
- > include, where appropriate, records such as notes of meetings and incident report forms which contain information relevant to the circumstances or context of the claim
- > provide supporting documentation to assist Comcare in determining whether there has been any administrative action—and detailed information and supporting documentation about that administrative action.

A statement could also include:

- > any history of the employee reporting similar symptoms or conditions, including a non-work related injury
- > whether or not the employee was at their normal workplace at the time when the claimed injury/illness arose and if not, an indication of where they were at the time (for example, working from home)
- > whether or not the employee was at work or on a work related activity at the time the claimed injury/illness arose, or on a journey to or from work (for example, travelling interstate for a training course)
- > where the employee was on a journey between home and a place of work, any relevant details relating to the location where the accident occurred (for example, whether the employer 'had control' over the area where the accident occurred)
- > where the employee was on an ordinary recess away from the place of work, whether the activity being undertaken by the employee was at the request or direction of the employer, or associated with employment (for example, advice on the level of employer support for any sporting activities that may be identified in the claim as the cause of injury)
- > information—especially in the case of a disease—about whether there were other people from the same workplace who were similarly affected
- > details of the employee's position including main tasks performed, equipment used and the frequency of use, supervision and support provided, etc.

Further information in relation to the preparation of a statement of facts is available from (*insert internal contact name*) or by contacting Comcare on 1300 366 979.