# Lodgement

## Lodgement

Lodgement is the first stage of the claims lifecycle in which an employee (or their representative) lodges a claim with Comcare.

### The lodgement process and objective

An employee can lodge a workers' compensation claim under the *Safety, Rehabilitation and Compensation Act 1988 (SRC Act)* when:

- they injure themselves in a way or place which they believe is connected to their employment, or
- they develop a disease which they believe is connected to their employment.

A claim can be lodged either online or using the hard copy form.

Our objectives for the lodgement stage are that the process:

1. is easy
2. is quick (we only collect the information we need)
3. is tailored / flexible
4. is transparent and informative (is empathetic, provides information on supports available now, and sets expectations)
5. supports us to confirm the identity of the employee.

**Relevant sections of SRC Act**

The following sections of the SRC Act are relevant to claim lodgement:

- section 53 - Notice of injury or loss of, or damage to, property
- section 54 – Claims for compensation.

#### Lodging a claim with Comcare

The SRC Act sets out the requirements for an employee to make a workers compensation claim. This page includes information on:

- what is required to lodge a claim
- medical evidence
- the lodgement process
- introductory information on lodging a claim for permanent impairment and work-related death.

Lodging a claim with Comcare

# Lodging a claim with Comcare

## Introduction

An employee can lodge a workers' compensation claim under the *Safety, Rehabilitation and Compensation Act 1988 (SRC Act)* when:

- they believe their physical or psychological injury or illness occurred at work or was significantly contributed to, or aggravated by, their work.

Their injury or illness may be taken to have occurred at work if it occurred while they were:

- away from work but undertaking work-related business or
- travelling for work.

A claim can be lodged either online or using the hard copy form.

Our objectives for the lodgement stage are that the process:

1. is easy
2. is quick (we only collect the information we need)
3. is tailored / flexible
4. is transparent and informative (is empathetic, provides information on supports available now, and sets expectations)
5. supports us to confirm the identity of the employee.

### Relevant sections of SRC Act

The following sections of the SRC Act are relevant to claim lodgement:

- section 53 - Notice of injury or loss of, or damage to, property
- section 54 – Claims for compensation.

## Process overview: roles and responsibilities

1. An **employee** or employee's representative lodges an online or hard copy compensation claim form.
    a. The **employer** completes Part 2 of the form, either in hard copy (provided by the employee) or online (after contact with the allocated Claims Manager).
2. The online form is automatically uploaded to Comcare's software and a notification is sent to **Claims Administration and Support (CAIS)**.
    a. The hard copy form is received and processed by **CAIS**.
3. **CAIS** is responsible for registering the claim and allocating to a Claims Operations team and a Claims Manager.

From this point, follow the processes in Registration.

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# What is required to make a claim under the SRC Act?

## Notice of injury

Section 53 of the SRC Act requires that there is notice of injury given to the relevant authority as soon as practicable after the employee becomes aware of the injury. If the relevant authority is Comcare, we acknowledge the new claim by calling or emailing the employee. This is done by the Claims Manager assigned to manage the claim.

We generally accept the claim form as being the notification of the injury for the purposes of section 53 of the SRC Act.

There is a different test for claims for work-related death.  For further guidance refer to the Work-related death page.

## Claims for compensation

An employee (or their representative) is required to provide the following to Comcare to make a claim for compensation (section 54):

- a written claim on a form approved by Comcare, and
- a medical certificate in a form approved by Comcare provided by a legally qualified medical practitioner (LQMP) except where the claim is for medical treatment only or a work-related death.

Comcare has not approved a specific type of certificate for the purposes of section 54. However, Comcare's preference is for employees to use:

1. our worker's compensation claim forms (either the online version of the hard copy)
2. the Comcare certificate of capacity as the medical certificate.

According to section 54(5) of the SRC Act, strict compliance is not required for a claim to be considered as made. An employee can use another scheme's workers' compensation form to lodge a claim.

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# Medical certificates/other medical information required to lodge a claim

The use of Comcare's certificate of capacity is preferred as it can assist doctors to provide clear information. However, any form of certificate can be submitted as long as it is provided by a legally qualified medical practitioner (LQMP). The following are examples of acceptable forms of medical information for the purposes of making a claim:

- reports and letters from treating doctors concerning the condition an employee is claiming compensation for
- certificates, reports and letters that may be held on a previous compensation claim file which are relevant and relate to an employee's new condition and claim
- admission and discharge summaries from hospitals that indicate what condition an employee was admitted and discharged from hospital for, and
- a hearing test, audiologist report, or audiogram (where the claim is for hearing loss).

Please see the Obtaining a medical certificate page for details of what information is required to support proper management of a claim.

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# What is the lodgement procedure?

## How to lodge a new claim for workers' compensation under the SRC Act

An employee may complete and submit their claim for compensation online using the Comcare Online Forms. Or they can complete the hard copy of the Workers' Compensation Claim Form and submit it via post or email.

## Online claims

An employee will need to complete the registration process to use the online workers' compensation claim form. They will be sent a link via an email to complete the claim form. This link is valid for 30 days.

When an employee completes and lodges a claim using the online claim form, the information on the form is uploaded into relevant systems.

**Employer component**

The employer may have signed up to receive notifications about online claim form lodgement. If so, the employer receives a notification to complete Part 2 of the online claim form.

Comcare will then proceed with the registration process. This includes allocating the claim to a claims team and Claims Manager. See Registration for more information about this step in the claims management cycle.

If necessary, the Claims Manager will then follow up with the employer to complete Part 2 of the claim form.

## Hard copy form claims

If an employee is claiming via hard copy for an injury or illness while travelling for work purposes, they may also complete the journey claim form. Or you can gather this information from the employee once a Workers' Compensation Claim Form is lodged. This form can be lodged with Comcare in the following ways:

- email general.enquiries@comcare.gov.au
- mail to Comcare, GPO Box 9905, Canberra ACT 2601.

When an employee completes and lodges a claim using the hard copy claim form, the employee may submit it to their employer first to complete Part 2. Or they may submit the form to Comcare without the employer completing Part 2.

Comcare will scan the claim form and complete the registration process. The Claims Administration and Income Support team (CAIS) is responsible for this process. This includes allocating the claim to a claims team and Claims Manager. See Registration for more information about this step in the claims management cycle.

The Claims Manager will then follow up with the employer to complete Part 2 of the claim form if necessary.

## Claims for work related death and permanent impairment

Where a representative of the employee wishes to make a claim for work-related death, they must complete the Work-related Death Compensation Claim form and submit it to Comcare. For further guidance, refer to the Work-related death page.

For information about lodging a permanent impairment claim (in which the injury or disease has resulted in a permanent impairment of any body part, system or function), refer to the Permanent impairment pages.

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# Registration

## Registration

Registration is the second stage of the claims lifecycle. During registration, claims documentation and information are entered into our systems. This includes relevant claims-related data being entered into Pracsys.

### The registration process and objective

The registration process begins when an employee lodges a claim with Comcare and ends when the claim is assigned in Pracsys to the relevant Claims team.

The objective for this stage of the claims lifecycle is quick information entry and registration of the claim. This includes creating a unique identifier and assigning the claim to the relevant Claims team based on employer, claim type or other factors.

The Claims Administration and Income Support (CAIS) and Specialised Claims teams are responsible for most aspects of the registration process.

Claims Managers have certain responsibilities as well. See Registration responsibilities for detailed information.

### Registering a new claim

There are several steps involved in the registration process. This page contains information about:

- registration roles and responsibilities
- claim numbers
- auto-populated and mandatory Pracsys fields
- liable customer numbers and cost centres
- claims without sufficient information, and
- withdrawing claims.

Registering a new claim

# Registering a new claim

## Introduction

Claim registration is the process of manually entering information into Pracsys. Once completed, this results in the claims being registered.

This page provides information and the associated procedure for registering new claims for compensation.

For information and procedures about registering permanent impairment claims, refer to the Registering a permanent impairment claim page. For reconsiderations, refer to the Reconsiderations page.

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## Registration responsibilities

To reflect the different types of claims and claims management arrangements, there are different responsibilities for registering claims. The following table sets out who registers which type of claims.

| **Categories of Claims** | **Registration responsibility** |
|---|---|
| Comcare Managed claims<br>(Premium / Pre-Premium) | Claims Administration and Income Support |
| Sensitive/Sensitive NV1 | Specialised Claims Team<br>Claims Administration and Income Support |
| Secure claims | Specialised Claims Team |
| Comcare Staff | EML |
| Externally Managed claims | EML<br>Gallagher Bassett |
| Asbestos including *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005* claims | Claims Administration and Income Support (using Specialised Claims Team for support) |
| Work-related death | Claims Administration and Income Support |
| Parliamentary Injury Compensation Scheme claims | Specialised Claims Team |
| *Members of Parliament (Staff) Act 1984* claims | Claims Administration and Income Support |

### Claims Manager responsibilities

Most processes involved in registering claims are completed by Claims Administration and Support (CAIS) or the Specialised Claims Team (SCT). Claims Managers are responsible for:

- withdrawing or reinstating a withdrawn claim
- communicating with the employee, for example to provide required evidence. CAIS may contact a Claims Manager to assist with this task throughout the registration process
- ensuring that once the claim is registered as compliant, determinations for initial liability under section 14 of the SRC Act are made within the prescribed timeframes.

See Withdrawal of a claim and Procedure to withdraw an undetermined claim for more information.

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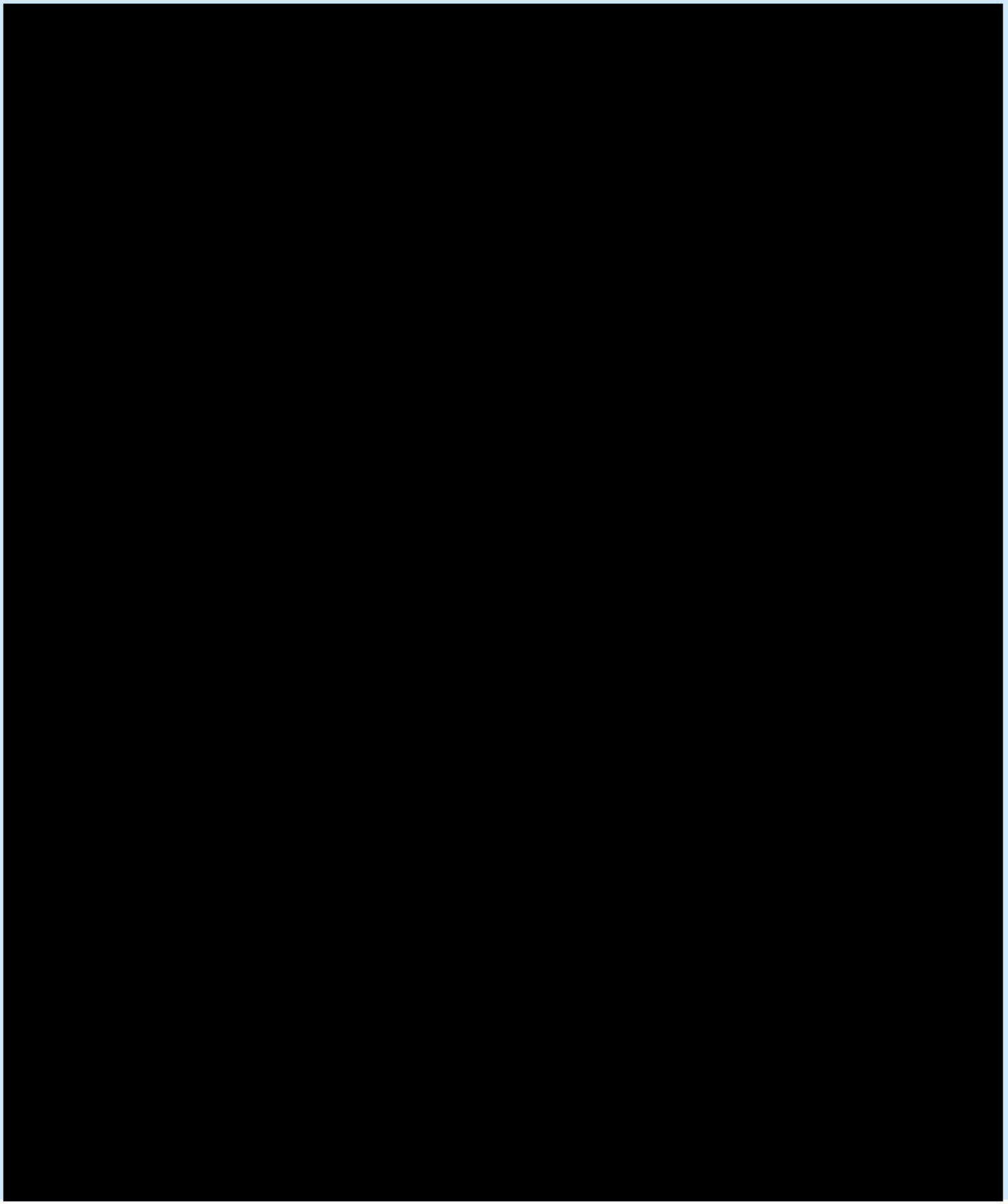

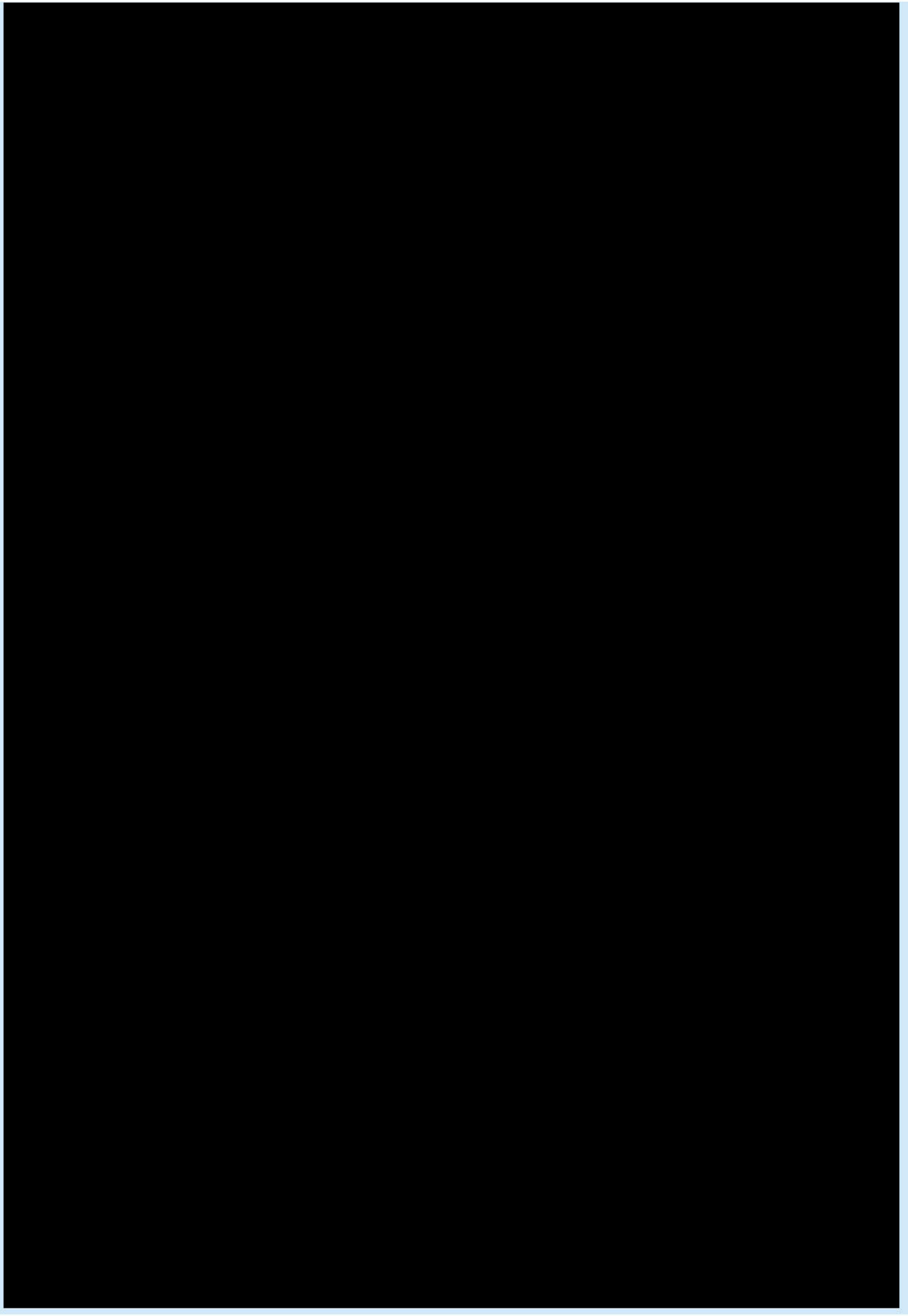

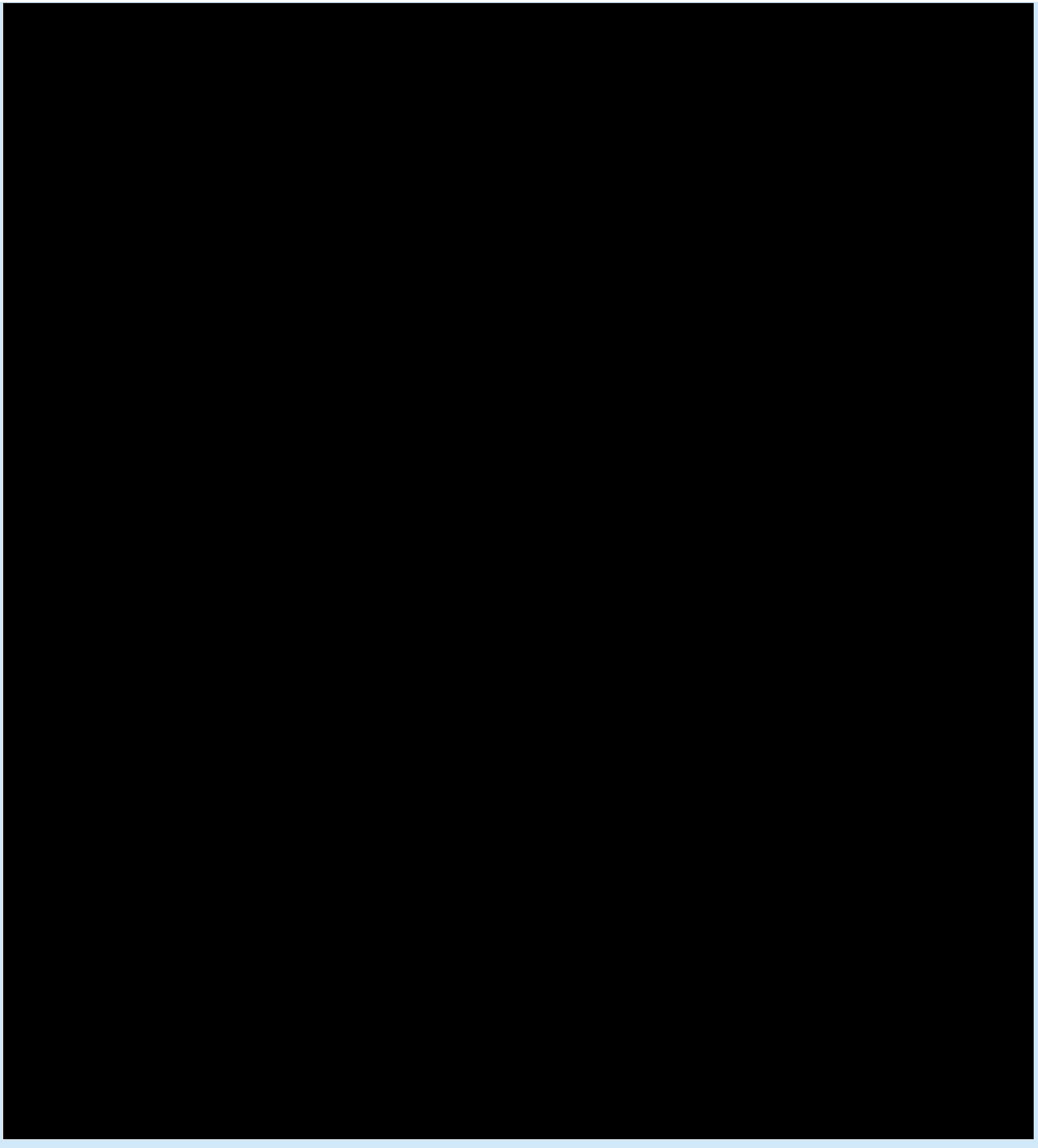

## Claim numbers

Claim numbers are automatically generated and assigned by Pracsys once the claim is registered on the system.

The employee number is the first part of a claim number and is unique to an employee, distinguishing that employee from others. Irrespective of the number of claims an employee may have, his or her employee number will always be the same.

The claim suffix is the second part of a claim number. It is unique to a particular claim, distinguishing that claim from other claims that an employee may have. As new claims are registered on Pracsys, claim suffix numbers are sequentially assigned.

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## Online claim form – auto population of data into Pracsys

When a new claim is submitted online, most of the fields are auto-populated into Pracsys, except the following:

- '*Medical Certificate date*', '*Provider No*' fields
- National Data Set (NDS) and Type of Occurrence Classification System Coding (TOOCS)
- '*Comcare Details*' tab, where you allocate the claim.

This only applies to new claims and not subsequent claims. If a subsequent claim is lodged, the information that is already in Pracsys is used. The Claims Administration and Income Support (CAIS) team amends the details if there are any differences between what is in Pracsys and what has been lodged via the online portal.

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## Mandatory fields to be completed in Pracsys

Mandatory fields are fields in Pracsys that must be completed to successfully register a new claim. If a mandatory field is not entered, Pracsys will highlight the field, and an error message will appear at the bottom of the screen. The claim cannot be created until the mandatory field/s is/are completed in Pracsys.

The following sections within the '*Register Claim*' (RCLM) function in Pracsys need to be completed, and the mandatory fields within each page are listed below:

- **employee** - given names, surname, birth date, actual address and mail address
- **injury/Illness** – injury description, injury date, prior claim same injury (tick box), workplace postcode and Comcare received date
- **NDS/TP/Journey** – nature of injury, body location, mechanism, breakdown agency, agency of injury and occupation
- **status/RTW** – employer received date, time off work and return to work
- **agency** – employer statement, liable customer and payroll customer and cost centre.

### Claim compliance

The claim can be created if the mandatory fields in Pracsys are completed. But the claim will only be marked as '*Compliant*' once a medical certificate or other supporting medical evidence is received. For further information refer to the section Claims without sufficient information and the Lodging a claim with Comcare page.

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# Liable customer numbers and cost centres

To allow Comcare to register and manage claims, a 'customer structure' was established in Pracsys which consists of the following:

- **Liable Customer and Payroll Customer** – The liable and payroll customer fields identify the Commonwealth employers. The liable customer is responsible for making the payment to an employee, unless the employee no longer works for that employer. In most instances, Comcare makes incapacity payments resulting from a compensable injury to the liable employer.
  **Note:** An employee may work for another Commonwealth employer after the date of injury. In that case, the new employer becomes responsible for making payments to the employee for time off work because of their compensable injury.
- **Liable Cost Centre** – This is the business area that an employee was attached to when their injury or illness occurred.
- **Payroll Cost Centre** – This is the cost centre an employee is paid from and also the Incapacity Payment Authority advice statements are sent out to. The employer's payroll cost centre number identifies the address for the correspondence. Employer letters are sent to the current employer for initial liability purposes. These cost centres are generally an employer's personnel section.
  **Note:** if an employee or employer exits the Commonwealth, Comcare becomes responsible for making incapacity payments resulting from the compensable injury to the employee.

Registering cost centres can be straightforward if a person continues to be employed by the Commonwealth. However, if a person is no longer employed by the Commonwealth, registering the claim against particular cost centres in Pracsys may not be as simple.

The table below provides details of the customer number and cost centre that a claim must be registered against if it falls within one of the scenarios detailed below:

| Liable customer numbers and cost centres | Description | Purpose |
|---|---|---|
| 464/03 | Not Relevant Authority | For when Comcare is not the relevant authority for claims administration |
| 518/01 | Australia Post Corporation | For when a claim is received and the employer is Australia Post and the condition is for a gradual onset disease, such as hearing loss (excluding asbestos related diseases) |
| 519/01 | Telstra Corporation | For when a claim is received and the employer is Telstra and the condition is for a gradual onset disease, such as hearing loss (excluding asbestos related diseases) |

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# Claims without sufficient information

A claim can be received which does not have sufficient information for it to be considered compliant with section 54 of the SRC Act. Usually, this is because there is insufficient medical information to proceed with assessing the claim.

Please see the Obtaining a medical certificate page for details of what information is required to support proper management of a claim.

**Example:**

Medical certificates that include no diagnosis, or a diagnosis of 'medical condition', 'stress' or 'pain' and/or do not include information about the causation of the injury/disease would be considered non-compliant as they do not provide the information required to proceed with assessing the compensation claim.

Where there is insufficient medical information to proceed with assessing a compensation claim, the claim will still be registered but with have a status of '*N/C*' (non-compliant) in the category field in Pracsys.

For further information, refer to the Refusing to deal with a claim page.

Once the relevant information has been received, the relevant fields in Pracsys are updated.

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## Withdrawal of a claim

After a claim has been lodged, the process of determination begins. During this time, before a decision is made, an employee (or their representative) may decide that they no longer wish to pursue the claim. They may request that the claim is withdrawn.

At this stage, the claim is being managed by a Claims Manager and so withdrawal of a claim is a Claims Manager responsibility.

A request to withdraw the claim does not mean that the employee cannot make a claim at a later date. If the employee decides to pursue their claim at a later date, then they are entitled to do so.

An employee (or their representative) must ask to withdraw their claim in writing. The written confirmation must state that the employee wishes to withdraw their claim.

You should only action requests which have come from the employee (or their representative).

If you receive a request from an employer, do not action it until you have received written confirmation from the employee that they wish to withdraw the claim.

If you receive a request for withdrawal, you must discuss it with your Assistant Director.

## Paying for rehabilitation services on a withdrawn claim

Rehabilitation services can be paid for by Comcare, even if an employee withdraws their claim. This is to ensure that the employee is supported by their rehabilitation authority even where they do not have an accepted compensation claim.

The rehabilitation service needs to have occurred after the originally claimed date of injury and before the withdrawal date.

To pay for rehabilitation services on a withdrawn claim:

- The Claims Manager needs to reopen the claim (Claim status) whilst maintaining the withdrawn status (Liability status). See Procedure to reopen a claim for instructions on reopening claims.
- CAIS can then amend and pay for the invoices.
- CAIS then asks the Claims Manager to close the claim again.

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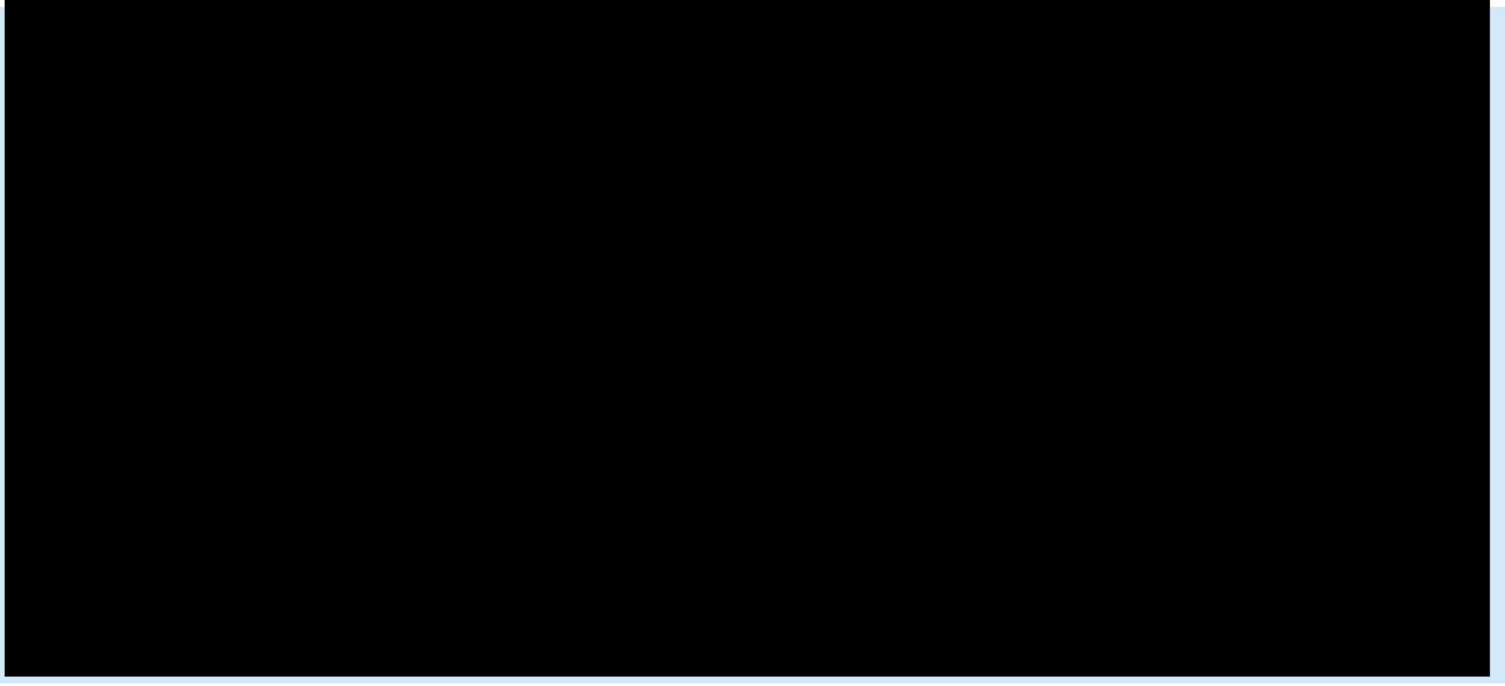

# Triage, Information gathering and Support

Triage is the first active stage of the claim lifecycle once a claim has been lodged and registered with Comcare. Support and information gathering are integral components of the triage process and beyond. There are no specific sections of the SRC Act that deal with triage.

## Triage

In the Triage, information gathering and support stage, the claim is reviewed as soon as possible after it is received, the employee and employer are contacted, and a path is agreed to gather the information needed to determine liability on the claim.

## Support

To optimise an employee's recovery and claims experience, support must be provided to them from lodgement, regardless of the eventual liability outcome. Support means regular proactive communication that keeps the employee informed. This should be done through easy-to-understand explanations that set realistic expectations for the employee and their unique circumstances. Further information about maintaining good communication with employees and employers can be found on the Communication with stakeholders pages.

## Information Gathering

Gathering information is an important part of the effective and efficient management of a claim, supporting sound decision making and optimising return to health and work. Further information on different types of information you may need can be found in the pages under Gathering claim information.

# The triage process and objective

Triage occurs when:

- a new claim is assigned to an Assistant Director in a Claims Operations team
- an existing claim requires further decision/s not included in the current claim plan
- a reconsideration is requested, or
- an Administrative Review Tribunal decision on a claim is made.

In this stage, the claim is quickly reviewed, information is gathered as quickly as possible, and conversations begin with the employee and employer to support return to health and return to work.

## Roles and responsibilities

Triage is conducted by the Claims Operations or Reconsiderations teams with support from Injury Management and additional teams.

First, when a claim is registered, an Assistant Director or above allocates the claim to a Claims Manager, Senior Claims Manager or Reconsiderations Officer where relevant, according to the allocation principles outlined in Allocation of a claim.

Then, the triage meeting is held (triage meetings can be held throughout the life of the claim as new information is provided or new determinations are required). See Triage meeting for details of who is involved and what is done during the meeting.

## Triage objectives

The objectives of this stage of the claims' lifecycle are:

- consistent, timely approach to review of a claim (new claim or change to an existing claim)
- gathering the information needed
- the employee, employer and other stakeholders are helped to understand the process and regular communication occurs.

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### Steps to triage a claim

To triage a claim, there are key steps that must be taken. These steps include:

- claim allocation
- triage meetings
- development of the claim plan.

See each page for detailed guidance.

**Allocating a claim**

**Triage meeting**

**Claim plans**

# Steps to triage a claim

## Steps to triage a claim

There are two key steps in the triage process:

1. Claim allocation
2. Triage meetings

### In this section

### Allocation of a claim

Our claims operating model includes making sure that claims are allocated to an appropriate claims manager and team. This page includes the following information:

- Who is responsible for allocating claims.
- Principles to guide allocation of claims.
- The allocation model.
- Claim categories of complexity to guide allocation.
- The risk and allocation checklist.

### Claim plans

A claim plan records key information about an individual claim, actions required, decision-making, claim status and ongoing management strategy. This page includes the following information:

- The purpose of a claim plan.
- Types of claim plans.
- Roles and responsibilities.
- Quality assurance.
- Where claim plans are stored.
- Procedure to upload the claim plan to Pracsys.
- Further resources and support.

### Triage meeting

Claim triage meetings are a multidisciplinary team discussion to plan and monitor the actions and resources needed to make decisions on claims accurately and quickly. This page contains the following information:

- Types of claims discussed at triage.
- Who attends triage meetings.
- When triage meetings are held.
- Booking triage meetings via the shared calendar, and the Procedure to book a claim for triage.

- Procedure to conduct a triage meeting, including pre-meeting activities and post-meeting activities.

# Allocation of a claim

## Introduction

Assistant Directors (and above) are responsible for allocation and re-allocation of claims to Claims Managers and Senior Claims Managers. The allocation of a claim is reviewed when the claim complexity or risk changes. These may both change during the life of the claim, for example because of a proposed change to the claim plan or a complaint.

This page sets out the principles for allocating Comcare-managed claims in Claims Operations teams. The aim is to support recovery to health and return to work by ensuring:

- claims are managed by staff who
  - are appropriately experienced, skilled and trained, with consideration of complexity and risk, and
  - do not have a conflict of interest
- continuity of claims management for the entire claim lifecycle, as far as possible, and
- workloads are appropriate and comparable between staff at the same level and taking account of WHS risks and management.

These principles apply to both initial allocation and any re-allocation of claims for:

- primary decision making and ongoing management
- reconsideration requests
- Administrative Review Tribunal (ART) appeals.

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## Principles to guide allocation

All claims, reconsiderations and appeals are allocated to APS5 level staff or above, considering appropriate workload for the level, role and WHS risks.

Any real, potential or perceived conflict of interest is managed appropriately via the completion of a pre-allocation check list.

Claims are assigned according to:

- complexity (medical, legal or other) – claim categorisation is used as a guide for this, with consideration of factors such as diagnosis, injury or disease circumstances, secondary claims
- risk (for employee, employer or Comcare) – types of risk include stakeholder, reputational, legal, financial. For example, there may be links to a WHS investigation or scheme significant issues.

The risk and allocation checklists are used to help assess risk.

Claim Allocation: Claims Managers are required to attempt contact with the employee and employer withing 2 business days of a claim being allocated to them.

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# Allocation model

The below table summarises how claims are allocated to different levels, based on complexity and risk. See Complexity – claims categories and Risk and allocation checklist for further details. For example, psychological claims that are classified as medium or high risk would be allocated to a Senior Claims Manager for management. A low intensity claim classified as low risk would be allocated to a Claims Manager to manage:.

| CATEGORY | Extreme risk | High risk | Medium risk | Low risk |
|---|---|---|---|---|
| Psychological | Assistant Director | Senior Claims Manager | Senior Claims Manager | Claims Manager |
| Specialised | Assistant Director | Senior Claims Manager | Senior Claims Manager | Claims Manager |
| High Intensity | Assistant Director | Senior Claims Manager | Claims Manager | Claims Manager |
| Low intensity | Assistant Director | Senior Claims Manager | Claims Manager | Claims Manager |

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# Complexity – claim categories

The below table sets out the defining features of claims in each category to support claim allocation, and sets out the approach and goal for each claim category:

| Category | Defining features | Claim approach and goal |
|---|---|---|
| Psychological | All claims, reconsiderations and appeals with primary or secondary nature of injury classified as 'Psychological'. | Claim approach & injury management support specific to psychological injury.<br><br>Goal is to:<br>• return to health and work; or<br>• minimise need for ongoing medical and income replacement support. |

| Category | Defining features | Claim approach and goal |
|---|---|---|
| **Specialised** | All claims, reconsiderations and appeals flagged as:<br><br>• **serious injury**<br>• catastrophic injury<br>• death<br>• asbestos-related including ARC Act Claims.<br><br>Note: Sensitive, secure and PICS claims are categorised like other claims but are managed by the Specialised Claims Team. | Specialist management approach reflects significant nature of injury.<br><br>Goal is to:<br><br>• provide treatment, support and assistance with an acceptance of the severity of injury and vulnerability of individual. |
| **High Intensity** | Claims (excluding specialised, psychological and pre-premium) with current NDS work status full or partial incapacity:<br><br>• Graduated return to work - income maintenance<br>  ◦ unknown employer<br>  ◦ pre-injury employer<br>  ◦ different employer<br>• working – capacity unknown<br>• not working – total incapacity – income maintenance<br>• unknown – not recorded.<br><br>Claims or reconsiderations involving:<br><br>• any liability decision – incl. secondary, no present liability or cessation<br>• complex injury or disease circumstances<br>• incapacity<br>• permanent Impairment<br>• rehabilitation (recon only).<br><br>ART appeals unless heard. | Injury requires significant input including injury management and/or rehabilitation and return to work support to address barriers on the claim.<br><br>Goal is:<br>• return employee to health and work; or<br>• minimise need for ongoing medical and income replacement support. |

| Category | Defining features | Claim approach and goal |
|---|---|---|
| | Pre-premium claims and claims (excluding specialised and psychological) with current work status of no incapacity:<br>• working - no income maintenance:<br>  ◦ unknown employer<br>  ◦ pre-injury employer<br>  ◦ different employer<br>• not working - not in receipt of income maintenance. | |
| **Low Intensity** | **Claims involving**:<br>• simple injury or disease circumstances, e.g. hearing loss.<br><br>**Reconsiderations involving**<br>• Household assistance & attendant care<br>• Medical treatment – single, allied health or low cost<br>• Aids and appliances<br><br>ART appeals that have been heard with decision reserved. | Claim can be resolved quickly or requires limited support.<br><br>Goal is:<br>• treat injury quickly (if not already treated)<br>• maintain at, or return to work quickly<br>• provide ongoing support to minimise impact of injury on employee. |

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## Risk and allocation checklist

All claims management staff have a responsibility to identify and manage risk in accordance with Comcare's risk management framework. Identifying risk requires good judgement. The below checklist is not exhaustive but provides a guide to help identify factors that may present risk in managing the claim – for the employee, the employer or Comcare. If any of these factors exist, consider the following:

- What impact is the issue likely to have (insignificant, minor, moderate, major, severe)?
- How many risk factors exist?  (if there is more than one, the level of risk is likely to be higher).
- Does a more experienced or senior person need to manage the claim?

- Who else needs to know or be involved? For example, do you need to seek medical, policy or legal advice, brief the Client Experience team, managers or Executive?

| Factor | Question | Response |
|---|---|---|
| **Welfare** | Is there a welfare risk to the employee? | Yes / No |
| | Is there a welfare risk to the Claims Management Group staff? | Yes / No |
| | Is there an unconstructive relationship between the Claims Manager and the employee or employer? | Yes / No |
| **Stakeholders** | Is there external dissatisfaction, disagreement, complaint, political or media interest or other reputational issue - or is it likely to arise? | Yes / No |
| **Operational - Medical/ Claim Outcome** | Are there factors likely to adversely impact achievement of the claim objective (i.e. return to health and work)? | Yes / No |
| | Are the claimed circumstances complex or unique? | Yes / No |
| | Is there a change in capacity? (e.g. medical certificates, medical evidence/report, verbal notification, claim age) | Yes / No |
| | Is there a change in treatment? (surgery request, medical evidence / report, clinical panel) | Yes / No |
| | Is Clinical Panel or IME assistance required? | Yes / No |
| **Legal, policy, process** | Is legal or policy advice required? | Yes / No |
| **Financial/Scheme Integrity** | Does the claim raise issues that might impact the number and / or cost of other claims? | Yes / No |
| **Other** | Are there any other factors that present risk for Comcare, the employee or employer? | Yes / No |

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# Triage meeting

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## What is a triage meeting?

Claim triage meetings are a multidisciplinary team discussions. In triage, you plan and monitor the actions and resources needed to make claim decisions accurately and quickly.

Effective triage meetings drive positive claim outcomes by ensuring:

- timely and quality decision-making
- person-centred, regular communication with the employee and employer that supports them through the process, helps them to understand what needs to be done, explains timeframes and keeps them updated about progress
- focused information gathering aligned to our principles for gathering and assessing information.
- strong collaboration between internal and external stakeholders
- early emphasis on recovery, rehabilitation and return to work, irrespective of liability status
- early identification of barriers and strategies to overcome them
- coaching and experience to develop team capability.

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## What claims are discussed at triage meetings?

The following must be discussed at a triage meeting within **five business days** of receipt or becoming aware of the issue.

- All new and complex claims, including claims without a medical certificate.
- Claims for secondary conditions.
- Any other claims where a decision outside the approved claim plan may be needed including:
  - section 14 liability revocation and no present liability
  - permanent impairment
  - re-open requests
  - IME report discussion
  - death
  - requests for complex, unusual or high-cost treatment (e.g. surgery or inpatient psychiatric), aids or appliances, alterations or modifications
  - significant changes to incapacity
  - write off or waiver of debt and third-party recoveries.
- All reconsideration requests and reconsiderations of own motion.
- All claims where an Administrative Review Tribunal (ART) or Court decision needs to be implemented (refer to the ART Implementation procedure for further detail about managing ART or Court decision implementation).

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## Who attends triage meetings?

For all triage meetings the following must attend:

- Assistant Director, Claims Operations – leads the triage meeting.
- Senior Claims Manager or Claims Manager allocated to the claim – leads discussion on allocated claims.
- Injury Manager allocated to the claim – contributes to claim discussion.

The following officers attend the Triage meeting as needed:

- Assistant Director, Injury Management Team.
- Reconsiderations Officer or Assistant Director, Reconsiderations – leads all discussions about reconsideration requests.
- Assistant Director, Claims Administration and Income Support – attends for all triage discussions about implementing ART decisions.

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## When do we hold triage meetings?

Each Claims Team has a daily triage meeting led by the Assistant Director of that team. Claims are to be discussed at triage **within five business days** of:

- receiving a new claim, reconsideration, Administrative Review Tribunal (ART) decision or a request that falls outside the approved claim plan (or otherwise identifying that one may be needed)
- receiving new information relating to the decision
- a decision has being made (or every three weeks until an ART decision is implemented) or the claim is closed.

Claims triage discussions may also take place at other times where the discussion is urgent or additional time, significant oversight or engagement of internal stakeholders is needed.

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## Booking a claim for a triage meeting

The shared Claims Operations Calendar in Outlook is used to schedule triage discussions. See Procedure to book a triage discussion for instructions.

Each Claims Operations team has a daily recurring meeting with the word ‘Triage’ in the meeting name.

The meeting times for different teams are staggered to support attendance by those in different teams (e.g. Injury Managers, Reconsideration Officers, Instructing Officers, Legal).

The following are responsible for ensuring that claims are scheduled for triage discussions as required:

- Assistant Director, Claims Operations – for new claims.
- Senior Claims Manager / Claims Manager – for decisions outside the approved claim plan.
- Reconsiderations Officer or Senior Reconsiderations Officer – for all reconsideration requests.

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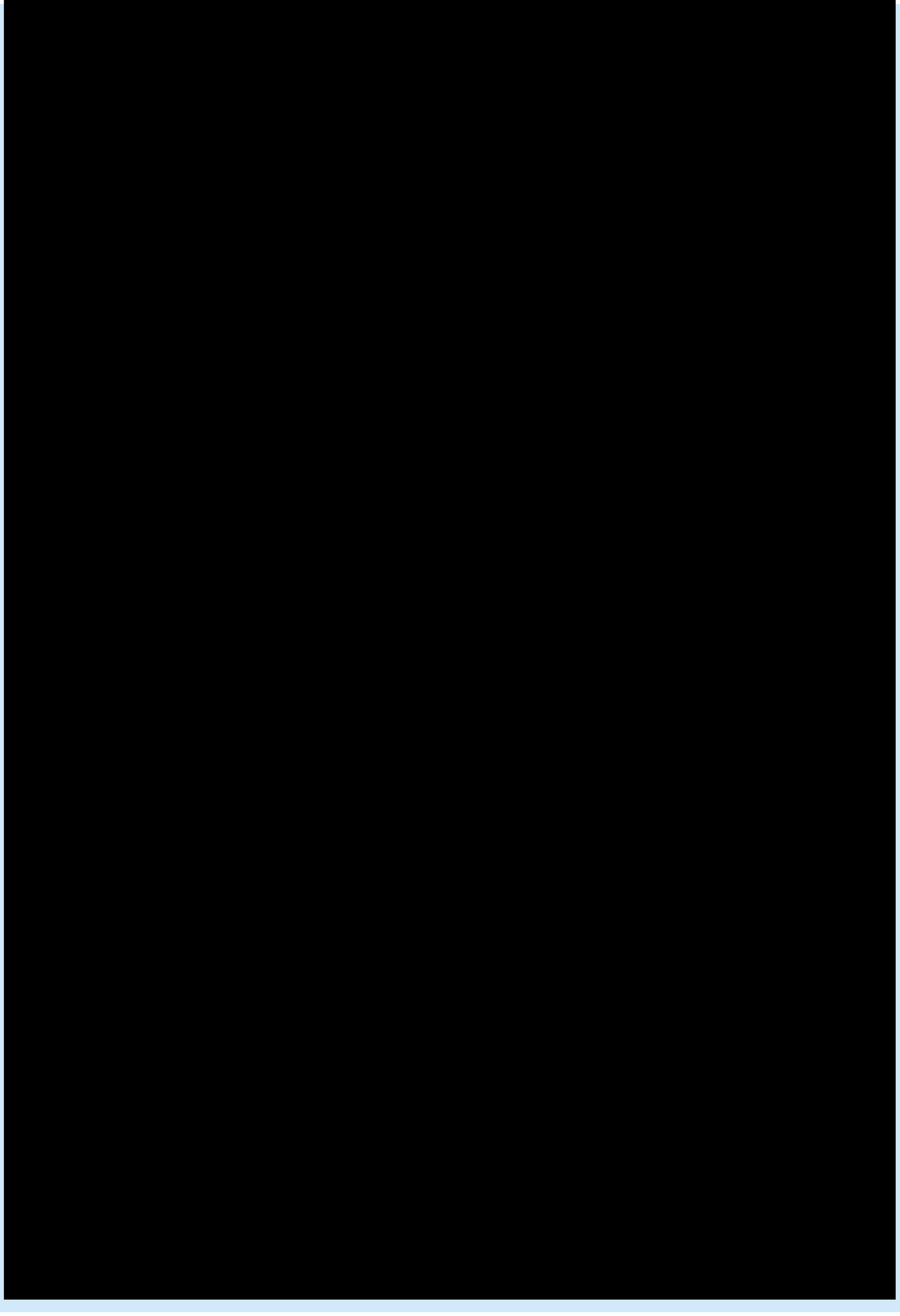

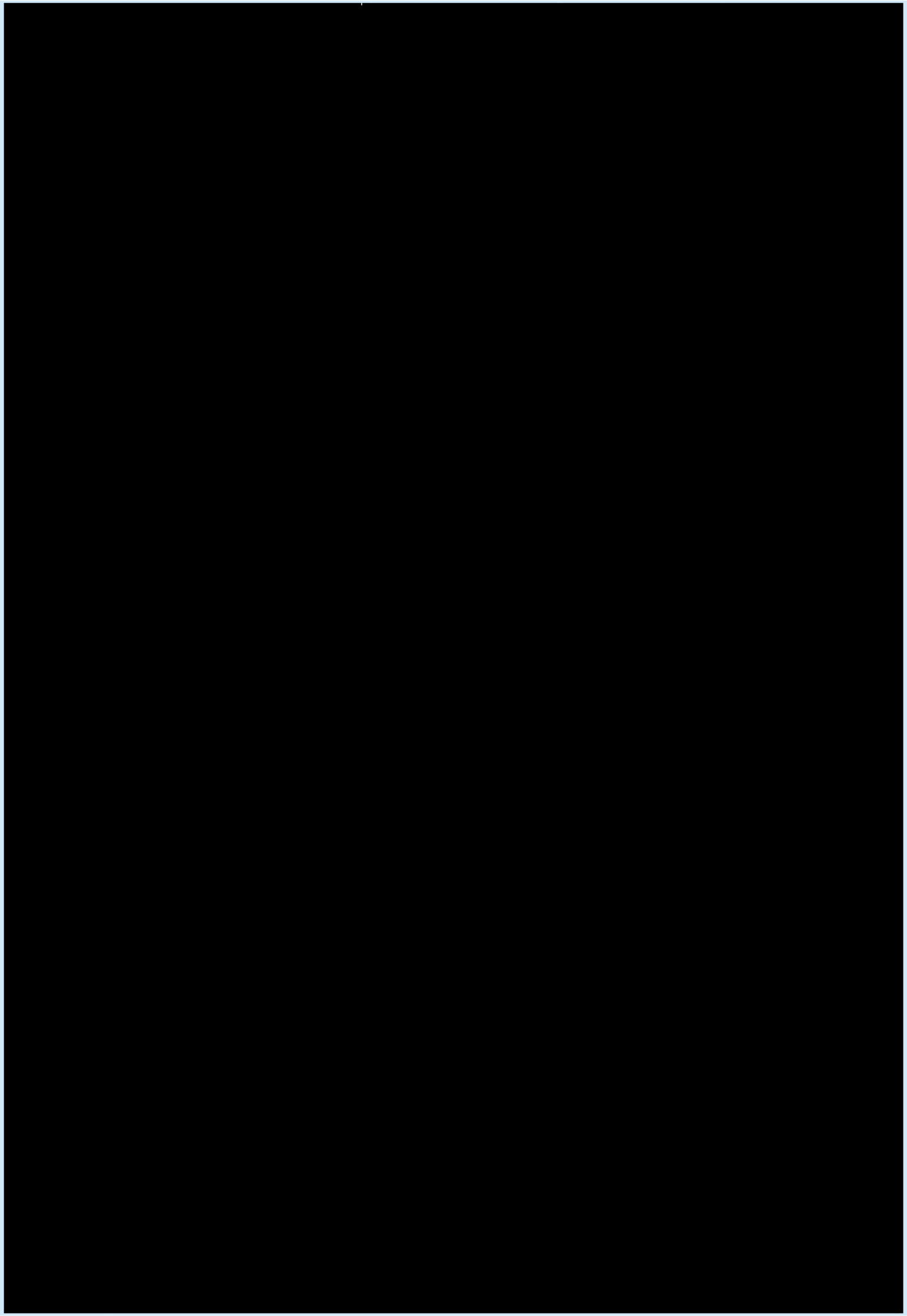

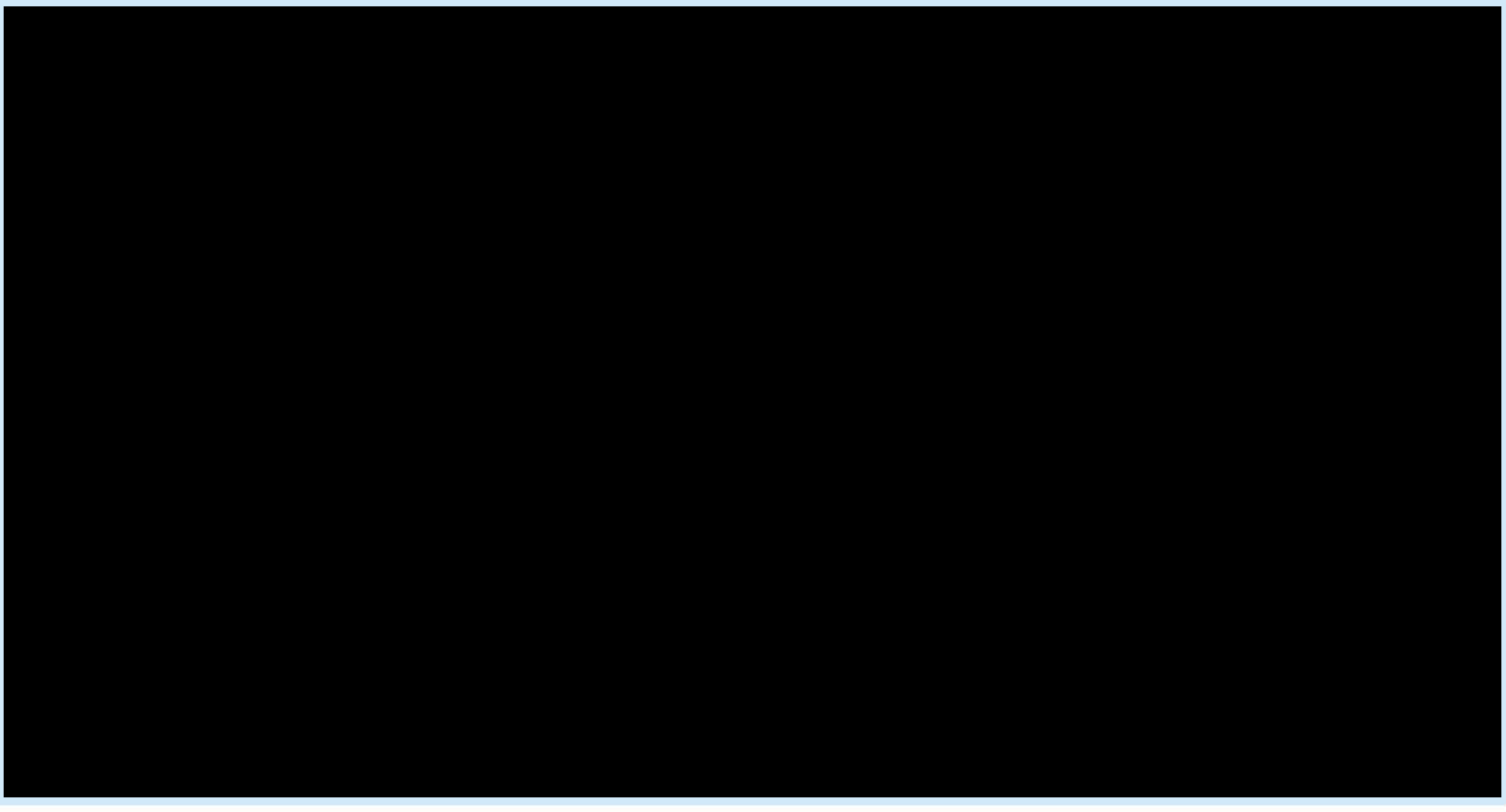

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# Claim plans

## Introduction

A claim plan records key information about an individual claim, including actions required, decision-making, claim status and ongoing management strategy.

A well written claim plan supports better practice claim management. It:

- drives timely and quality decision making
- enhances client experience
- simplify processes, providing claim teams with quick access to essential claim information
- supports collaboration between everyone involved in the claim and coordinated service delivery
- ensures an early and immediate focus on rehabilitation and return to work (irrespective of the claim determination)
- ensures recovery and return to work barriers are identified and documented, and a strategy is in place to overcome them
- provides an ongoing record of return-to-work services and treatment adopted to ensure that the employee's return to work is sustainable.

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## The purpose of a claim plan

The claim plan is used to:

- record key information about an individual claim
- document a claims strategy with goals and actions, i.e. document outcomes from triage meetings and actions required to determine or reconsider a claim, or support recovery and return to work, and identify the resources required to implement the plan
- record liability decision making
- track return to work, return to health and treatment outcomes
- identify and document barriers impacting return to work or recovery.

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## Types of claim plan

There are two types of claim plan to be completed. First, the Liability Claim Plan is completed to document the liability outcome and the reasons/evidence for the outcome. Second, the Claim Management Plan is completed and continues to be updated throughout the life of the claim. More information is provided below.

### Liability Claim Plan

The first claim plan to be completed is the Liability Claim Plan.

Claims Managers or Reconsideration Officers complete these for all liability decisions (initial and reconsideration). These must then be submitted to the Assistant Director for review and quality assurance with the draft decision.

The Liability Claim Plan provides a summary of the information gathered and the reasons for accepting or declining liability. For reconsiderations, it also records any lessons learned (claims-specific or general) to be shared with the Claims Operations team or more broadly.

## Claim Management Plan

The next claim plan to be completed is the Claim Management Plan.

Claims Managers and Reconsideration Officers are required to complete these for new claims (including secondary claims, permanent impairment, death claims) and reconsiderations.

This claim plan records outcomes from triage meetings including actions required to gather information and obtain medical, legal or other expertise needed to make a liability decision. Claim Management Plans should be reviewed at triage meetings every week until the claim is determined, or the reconsideration is completed.

## Claim Management Plan – ongoing updates

The Claim Management Plan continues to be updated for all open accepted claims. It records the plan for managing the claim, including any actions required, approved treatment and other supports, and identifies any barriers to recovery or return to work, and strategies for addressing them.

For further guidance on reviewing claims, refer to the What are claim reviews page.

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# Roles and responsibilities

**Claims Managers** engage as needed with everyone involved in the claim (employee, employer, treating health practitioners, claims teams and others) when completing claim plans.

C**laim Managers and Reconsideration Officers** are responsible for:

- completing, implementing, and tracking progress of claim plans (this may include assigning actions to other team members or other teams with oversight and coordination being provided by themselves)
- collaborating with Injury Management Team members when completing, implementing, and monitoring claim plans
- submitting draft claim plans and liability decisions for review and quality assurance
- when approved, finalising the claim plan and decision and uploading to Pracsys.

**Injury Managers** collaborate with Claims Managers to provide support with:

- medical and treatment-related information (e.g. diagnosis, prognosis, co-morbidities, evidence-based treatment approaches, expected recovery timeframes, medical certification)
- applying a biopsychosocial approach to identification of barriers and development of tailored strategies to achieve desired outcomes
- rehabilitation and return to work information (e.g. work capacity, rehabilitation programs, return to work plans, suitable duties)
- review of claims before case conferences and claim reviews.

**Assistant Directors** are required to:

- coach and support Claims Managers with the preparation of claim plans
- review and clear claim plans and liability decisions
- agree to claim plans in triage and review meetings (or as required) including the resources required to implement the plan
- oversee implementation of claim plans
- review and clear liability decisions and submit to the Director with the Liability claim plans for decision.

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## Quality assurance (QA)

The Assistant Director must review and clear:

- all liability claim plans and draft decisions
- the first claim management plan
- some subsequent claim management plans. You should consider the complexity and any risk factors associated with the claim when assessing whether to refer to your Assistant Director for quality assurance (Note: if in doubt, discuss it with your Assistant Director).

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## Where are claim plans stored?

Finalised claim plans are uploaded as a PDF document to the claim file in Pracsys. The original Word document is stored in HPE Content Manager for updates until it is finalised. Details on how to do this in HPE can be found in the following two links:

- Simple guide to using HPE Content Manager for Claims Ops
- CMG Guide to Storage in HPE

You should check the approach to file and record management within your team. Guidance can also be found on the file and diary maintenance page.

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# Liability assessment and decision making

## Liability and decision making

This section of the Claims Manual relates to mak **the initial liability decision**, after a claim for compensation has been lodged, registered and triaged.

**Initial liability assessment and decision-making** the part of the claims life cycle where informatio that has been gathered about a claim is assessed and a sound decision is made on the claim.

Throughout the lifecycle of the claim, many othe liability decisions will need to be made. These include but are not limited to Requests for treatment, Permanent impairment and non-economic loss, Work-related death, and Debt waivers. Please refer to the individual sections linked here for guidance on making these other liability decisions which may follow the initial liability determination.

At all times, the principles of **ensuring that a liability decision is sound and delivered with great customer service** remain the same. These principles are important in every area, including initial liability and all the sections linked above, where decision-making is required.

## The liability assessment and decision making process and objective

### Roles and responsibilities

Liability assessments and determinations are completed by Claims Managers, with support where needed from Assistant Directors and Injury Managers.

### Process and objectives

Once we have completed triage and gathered all the information needed to make a decision on the claim, we assess liability. Be aware of the prescribed timeframes for determining claims for initial liability. These are imposed by the *SRC Amendment (Period for Decision-making) Regulations 2023*. See Decision-making under the SRC Act for details of required timeframes to determine claims.

1. **First**, we review the evidence and claim file with reference to the liability provisions and legislative tests of the SRC Act. This part of the process is supported by guidance in the Legislative tests and initial liability pages.

2. **Second**, we make a determination of liability and we ensure that our determination is entered into Pracsys and we communicate the determination to the employee and employer. The guidance for this can be found in the Making and entering an initial liability determination pages.

The objectives of this stage of the claims lifecycle are as follows:

- Accurate, timely, merits-based decisions are made and those affected are afforded natural justice and understand their review rights.
- Decisions are communicated empathetically, effectively and in a timely way.
- The employee is linked to appropriate support services, regardless of the outcome.

There is a suite of online training on ComLearn about Determining liability.

## Legislative tests and initial liability

Making an initial liability decision on a claim is a critical step in the claims lifecycle. There are a series of tests under the SRC Act that must be applied to the information gathered as part of this process. In this subsection, you will find pages on:

- determining whether a claimant is an employee under the SRC Act
- the requirement to provide written notice of injury as soon as practicable
- the requirement for the claimed condition to meet the definition of an injury or disease under the SRC Act
- situations where the injury is taken to have arisen out of, or in the course of, employment under section 6(1)
- considerations relevant to disease claims, including presumptive provisions for first responders
- exclusionary provisions for circumstances where an employee is not entitled to compensation
- information about specific circumstances that may require additional information or protocols during determination, including claims for hearing loss and claims for injury acquired during the claims or rehabilitation process, as well as other circumstances, and
- information about aggravations, accelerations and recurrences.

**Employees under the SRC Act**

**Written notice of injury**

**Injury and disease under the SRC Act**

**Injuries under section 6(1)**

**Considerations relevant to disease claims**

**Exclusionary Provisions**

Specific conditions and circumstances

Aggravations, accelerations and recurrences

## Decision making under the SRC Act

In making decisions under the SRC Act we must ensure natural justice is afforded to the claimant and employer. This section outlines the processes required for making and communicating a determination, including:

- ensuring all aspects of the decision-making process have been completed
- all information has been considered
- the legislation has been appropriately applied and
- natural justice principles have been followed.

Natural Justice

## Making and entering an initial liability determination

The assessment of the information against the legislative tests is completed, and the determination has been made. Next, there are several steps to enter the initial liability determination into Comcare's systems and communicate the determination. This section contains information including:

- entering provisional liability information through iClaim
- drafting the determination
- identifying the correct International Classification of Diseases codes.

Entering and finalising an initial liability determination

International Classification of Diseases

# Legislative tests and initial liability

## Determining initial liability

For a claim to be determined under the SRC Act, there are several key legislative tests that must be considered and applied. The pages in this section provide guidance about applying these legislative tests in your determination.

Each legislative test requires that you gather and assess key evidence, documents and information and apply the tests to this evidence. Consult the pages in Gathering claim information, in particular the pages on obtaining medical evidence, for help with information gathering.

If you discover something that does not look right, feel right, or when you discover concerning or previously undisclosed information either from the employee or another source (employer, rehabilitation provider etc) that is relevant and has the potential to impact the management of a claim, please refer to the “Just Ask” process.

### In this section

### Employees under the SRC Act

A primary test for determining initial liability is whether the person is an employee as defined under the SRC Act. This page includes information on:

- who is considered an employee under the SRC Act, including information about employees who work for Members of Parliament and ACT employees
- persons declared by the Minister to be employees
- persons not covered by the SRC Act, and
- persons working in specific places or roles.

### Written notice of injury

An employee must provide a written notice of injury to the relevant authority as soon as practicable after the injury (or be taken to have provided a written notice as soon as practicable after the injury) for liability to be accepted. This page contains information about:

- notice to the relevant authority
- the meaning of ‘as soon as practicable’
- prejudice, which is when the employee's failure to provide notice as soon as practicable prejudices Comcare, and
- exceptions where notice is deemed to have been given.

### Injury and disease under the SRC Act

For liability to be accepted for a claimed condition it must meet the definition of an injury or disease under the SRC Act, which includes meeting the test of being related to employment. This page contains information about:

- establishing the condition (injury or disease) through medical evidence – necessary before you can establish the relevant connection between the condition and employment
- for injuries: whether they arose out of, or in the course of, employment
- for disease claims: whether employment contributed to the claimed condition to the appropriate degree, and other considerations, and
- injuries sustained during an 'interval or interlude', including overall periods of work, activity-related injuries, and work-related travel.

## Employment relationship - injuries under section 6(1) of the SRC Act

One of the legislative tests required under section 5A(1) is that the injury arose out of, or in the course of, employment. Section 6(1) of the SRC Act defines some circumstances where an injury will be **deemed** as having arisen out of, or in the course of, employment. This page contains guidance on these circumstances, namely:

- Injury as a result of an act of violence – section 6(1)(a)
- Injury sustained at a place of work – section 6(1)(b)
- Temporarily absent from work on an ordinary recess – section 6(1)(b)
- Temporarily absent from place of work – section 6(1)(c)
- Injuries resulting from travel – sections 6(1)(d), (ea), (g) and section 6(1C)
- At a place of education except while on leave without pay – section 6(1)(e)
- Declared places and employees working outside Australia – section 6(1)(h) and (i)
- Exclusionary provisions that apply when considering claims under section 6(1).

## Considerations relevant to disease claims

There are specific provisions and considerations relevant to determining liability for disease claims under the SRC Act. This page contains information on these, including:

- the legislative test for disease claims with a date of injury before 13 April 2007
- information about psychological ailments and perception
- specified diseases and employment under section 7(1) of the SRC Act including the procedure to assess if section 7(1) applies
- greater incidence of disease under section 7(2) and 7(3) of the SRC Act
- deeming date of injury under section 7(4) of the SRC Act
- long latency diseases
- diseases impacting firefighters including the procedure to assess a firefighter's claim
- presumptive provisions for first responders, including the procedure on assessing a first responder's claim.

## Specific conditions and circumstances

There are some unique types of claims that may arise. This page contains information about these, including:

- New conditions which result from compensable medical treatment for an existing compensable condition – where medical treatment has caused a new condition.

- Liability for employees who are engaged locally in overseas locations.
- Hearing loss claims.
- Transitional provisions, for claims with a date of injury prior to the current SRC Act coming into effect.
- Claims arising out of the claim administration or rehabilitation process.
- Loss of or damage to property belonging to an employee – including items like glasses / spectacles, hearing aids or wheelchairs.

## Exclusionary Provisions

The SRC Act provides that in certain circumstances employees are excluded from receiving compensation. This page contains information about:

- intentionally self-inflicted conditions
- serious and wilful misconduct
- under the influence of alcohol or a drug
- employee voluntarily and unreasonably submitting to an abnormal risk of injury
- wilful and false representation made about a disease
- definition of injury for claims with date of injury prior to 13 April 2007
- reasonable administrative action taken in a reasonable manner.

## Aggravations, accelerations and recurrences

Aggravation under the SRC Act includes acceleration and recurrence. An employee may wish to claim compensation for an aggravation of a compensable, or a non-compensable, underlying, or pre-existing medical condition. This page contains information about:

- requirements for liability acceptance for aggravations
- information about medical terminology
- aggravations, which is where a condition has been made worse by an occurrence related to work, rather than by natural progression. This section includes information on breaks in causation, exacerbation, and duration of aggravation.
- accelerations, included under aggravation, in which the normal underlying disease is hastened due to an occurrence related to work
- recurrences, included under aggravation, which is where the symptoms of a previous condition or injury re-emerge either spontaneously or because of the ordinary stresses and strains of daily living and working
- conditions where symptoms fluctuate but which are not aggravations, accelerations or recurrences
- flare ups, which may fall within the definition of an aggravation, temporary aggravation or recurrence
- underlying and pre-existing medical conditions, including assessing underlying and pre-existing conditions.

# Employees under the SRC Act

Published 06/10/2025

## Introduction to employees under the SRC Act

When a new claim is received, you must be satisfied the claim has been lodged by or on behalf of an 'employee'. An 'employee' is defined under section 5 of the SRC Act, or the relevant Commonwealth Act at the date of injury. If the claimant does not fit the definition in the Act of an 'employee', then coverage does not exist for the person under the Act.

Comcare makes decisions on workers' compensation claims received from current and former:

- employees of the Commonwealth or Commonwealth authorities including persons employed under a contract of service or apprenticeship
- members of the Australian Federal Police
- persons declared by the Minister to be Commonwealth employees
- persons taken to be employed by the Australian Capital Territory as declared under section 5(15) for claims with a date of injury before 1 July 1989.

**Note:** Employees who work for Members of Parliament staff are employed on behalf of the Commonwealth under the *Members of Parliament (Staff) Act 1984* (MOP(S) Act). Although not employed under the *Public Service Act 1999* (like most Commonwealth employees), they are still considered 'a person who is employed by the Commonwealth'. They are therefore 'employees' in accordance with section 5 of the SRC Act.

Claims for compensation from Parliamentarian's are managed by the Specialised Claims team under the Parliamentary Injury Compensation Scheme (PICS).

All new claim assessments and determinations must rely on evidence, including documents and information in the claim file. Consult the pages in Gathering claim information for help with information gathering to support your assessment and determination.

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## ACT employees

The ACT government manages most of its workers compensation claims. Comcare continues to be responsible for managing claims with a date of injury prior to 1 July 1989. While there are transitional arrangements in place for existing claims, all claims for compensation after this date (1 July 1989) are to be referred to ACT Government. Comcare is no longer the decision maker for claims from these employees. The Safety, Rehabilitation and Compensation Commission (SRCC) granted a licence to the ACT on 28 November 2018 with a commencement date of 1 March 2019. This licence applies to:

- employees of the ACT Government with a date of injury on or after 1 July 1989
- a member of the ACT Fire and Rescue Service within the meaning of the *Emergencies Act 2004* of the Australian Capital Territory, whose position included engaging in any firefighting and related activities.

As part of ACT Government moving to self-insurance arrangements, a Memorandum of Understanding (MOU) between ACT Government and Comcare was put in place between the two agencies to clarify claims management arrangements.

If an ACT Government claim for workers compensation with a date of injury after 1 July 1989 is received by Comcare, then it is the responsibility of the ACT Government to manage and should be returned to the originator as outlined in the MOU.

If you are uncertain whether a person is an employee under the SRC Act, you should discuss the claim with your Assistant Director.

If you have any queries about an ACT Government claim matter, please contact the Director – Claims Melbourne/Canberra.

### What to do if a closed ACT Government claim is reopened?

Comcare and the ACT Government agreed that all open and some closed claim files with a date of injury post-1 July 1989 would be transferred to the ACT Government.

Comcare retained a cohort of ACT Government's closed claims (but they fall within the scope of the ACT Government's self-insurance licence).

Where a closed claim that falls within the ACT Government's self-insurance licence is reactivated, Comcare will advise the ACT Government and transfer the claim file as outlined in the MOU. More information about this is contained in the MOU.

### System changes

PRACSYS changes were implemented on 18 February 2021 to identify ACT Government claims that fall within the scope of their self-insurance licence and that Comcare do **not** manage. This will assist Comcare to ensure we manage only the claims we are responsible for.

Claims which are part of this cohort have a highlighted panel in the '*Team*' name in the claim details header (the same as claims managed externally under delegated arrangements). Additionally, DOCSYS provides a warning message regarding these claims so that documents are not uploaded onto the claim files.

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## Persons employed under a contract OF service

Generally, public servants are covered by a contract of service. The key indicators of a contract of service are:

- The employer has the power to hire the person engaged for the job.
- The payment is in the form of wages and the employer deducts tax and pays superannuation.
- The person engaged is being paid by the employer and not through a separate company.
- The employer has the right to supervise and control the manner in which the employee does their work.
- The person engaged is subject to the employer's disciplinary standards, i.e. for Commonwealth employment the person would be subject to the APS Code of Conduct and any other internal department policies which provide guidance and standards of behaviour.

**Note:** If the above indicators do not apply, the person may be engaged under a 'contract for service'. The SRC Act does not use the phrase 'contract for service', but the phrase is used to distinguish it from a contract of service.

## Persons employed under a contract FOR service

The key indicators of a contract for service include, but are not limited to the following:

- The employer engages a company, firm or some other similar party to perform a service (usually a specific task) for the agency.
- The employer will pay the company or firm for the service.
- The company or firm is responsible for providing relevant people to perform the service.
- The company or firm is responsible for paying the people they engage to perform the service.
- The company or firm has a high level of control in how the work is done.
- The person engaged by the company or firm is not subject to the employer's disciplinary standards and any problems with the person engaged by the company or firm is dealt with by the company or firm and not the employer.
- The person is in business on their own account, i.e. they have a business set up, so they could be labelled a 'contractor'.
- The person provides their own tools or equipment.

None of the points above in themselves exclusively preclude a person from claiming compensation. A judgement must be made on the basis of all the indicators relevant to that particular person before deciding whether they are an 'employee' for the purposes of the SRC Act.

**Employee vs contractor:** Where there is a contract, a decision must be made as to what extent the person is an 'employee', rather than a 'contractor'. Obtaining a copy of a person's contract which sets out the terms and conditions of their engagement will assist with establishing if the person is an employee under the SRC Act.

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# Persons declared by the Minister to be employees

Under section 5(6) of the SRC Act, the Minister may declare persons to be employees of the Commonwealth. These are persons who engage in activities, or perform acts, that are at the:

- request or direction, for the benefit, or under a requirement made by or under a law, of the Commonwealth, or
- request or direction, or for the benefit, of a Commonwealth authority or a licensed corporation.

**Note:** Compensation coverage relates only to the performance of such acts as specified in the particular notice of declaration, linked below.

A list of persons declared to be Commonwealth employers under section 5(6) of the SRC Act is available in the online Annotated SRC Act.

## Commonwealth Rehabilitation Services

Commonwealth Rehabilitation Services (CRS) clients were declared to be employees under section 5(6) of the SRC Act. CRS clients are persons who are being rehabilitated with the CRS. They were deemed to be employees if they sustained an injury while undertaking their rehabilitation program, or receiving training or treatment provided by CRS, including travelling to and from that place **before 1 July 2007**. However, the declaration was revoked on and from 1 July 2007. This means only claims with an injury date prior to 1 July 2007 can still be considered under the SRC Act.

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# Persons not covered by the SRC Act

The SRC Act does not apply to:

- judges
- members of Parliament and Ministers of State
- employees of the Public Service of an external Territory (such as Norfolk Island)
- Seamen who are covered under the *Seafarers' Rehabilitation and Compensation Act 1992*.

Note: Members of Parliament and Ministers of State may be covered under the Parliamentary Injury Compensation Scheme (PICS) which came into effect on 1 January 2016.

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# Persons working in specific places or roles

A Claims Manager may receive a new claim from a person claiming to have worked in a specific place or in a specific role. Below are some scenarios of persons working in specific places or roles that a Claims Manager should familiarise themselves with.

## South East Asia Treaty Organisation (SEATO) aid program

Civilian nurses from Australia were employed under contract by the then Department of External Affairs (now the Department of Foreign Affairs and Trade). They were assigned to work in Vietnam as part of Australia's involvement there under the Commonwealth Government's SEATO aid program.

**Note:** AusAID was the Commonwealth authority with responsibility for the function under which the SEATO aid program was set up. AusAID was integrated into the Department of Foreign Affairs and Trade.

Nurses who were contracted under the SEATO Aid program and who have been diagnosed with any condition which they believe developed as a result of their employment in Vietnam are able to submit a claim to Comcare for consideration under the SRC Act.

Information or documents that a SEATO nurse can provide to assist in the consideration of their claim includes, but is not limited to:

- details of the employee's period of employment or a copy of their employment contract (if available)
- details of the employee's duties in Vietnam including their dates of service and where they worked (or approximations of the relevant dates if the exact dates are not available)
- copies of any other information/documents that the employee may have in their possession that can assist in the consideration of their claim (e.g. copies of correspondence from their employer during that time), and
- copies of any medical reports that the employee may have in their possession that is relevant to their claimed condition.

**Note**: From the 1 July 2019 the *Treatment Benefits (Special Access) (Consequential Amendments and Transitional Provisions) Bill 2019* provides for medical treatment through a Department of Veterans' Affairs treatment card ('gold card') for SEATO nurses. Once a SEATO nurse has access to the DVA Gold Card, they lose access to their medical entitlements under the SRC Act.

## Australian Broadcasting Corporation (ABC)

In February 2005, the media reported a high level of breast cancer amongst employees at the ABC Toowong workplace. As a result, Queensland Health conducted investigations which acknowledged that there was an unexplained statistical excess of breast cancer occurrences and that there was no plausible exposure that would explain the elevated number.

On 13 July 2006, the ABC announced an independent review panel of experts had been commissioned to conduct an investigation. The final report, dated 13 June 2007, found that the occurrence of breast cancer among employees of ABC Toowong was unusually high when compared to the incidence of breast cancer in the general community.

**Note:** If a Claims Manager receives a claim from an employee employed by the ABC in Toowong, further advice can be sought from Claims Strategy and Governance- Help desk decision support.

## F-111 Deseal/Reseal programs

Deseal/Reseal (DSRS) programs were conducted from 1973 at the RAAF Base in Amberley. Activities undertaken consisted of periodic removal of sealing inside F-111 aircraft fuel tanks and replacement with new sealant to stem leaks. Some employees spent significant amounts of time in the fuel tanks and were exposed to jet fuel and chemicals. The employees' protective garments were inadequate and throughout the program employees identified various medical conditions that appeared to be related to DSRS chemicals. Other employees, although not involved in tank entry, also had an increased risk of exposure due to the nature of their duties.

A Board of Inquiry was established in 2000 to examine the effects on employees of possible chemical exposure during all the DSRS programs. This culminated in the Study of Health Outcomes in Aircraft Maintenance Personnel (SHOAMP).

**Note:** If a Claims Manager receives a claim from an employee claiming chemical exposure during a DSRS program, further advice can be sought from Claims Strategy and Governance- Help desk decision support.

## Radiation claims arising from British nuclear tests

Between 1952 and 1957 the British Government with the agreement of the Australian Government carried out an extensive program of nuclear weapons testing in Australia. The tests were carried out in the Monte Bello group of islands off the Western Australian coast and at Emu Field and Maralinga in South Australia. Minor nuclear test trials were conducted at Maralinga between 1953 and 1963. There was a major clean-up operation conducted in 1967 (April to July), called Operation Brumby, followed by other clean-ups.

Claims for workers compensation in respect of conditions attributed to exposure to radiation from British nuclear tests in Australia may arise from:

- persons involved in the tests, or
- dependants of a deceased employee involved in the tests.

Comcare is responsible for investigating and determining claims from employees of Commonwealth agencies. Claims from military personnel would be managed by Department of Veterans' Affairs, and claims from Australia Post (formerly known as Post Master General), and Telstra (formerly known as Telecom) should be referred to those agencies.

Any claims from non-Commonwealth employees (i.e. construction workers, pastoralists, indigenous Australians) should be referred to Scheme Policy and Design. Scheme Policy and Design will ensure the claim is forwarded to the Department of Jobs and Small Business. The Department has oversight of The Administrative Scheme – a scheme set up to compensate persons affected by the nuclear testing. The Department may request Comcare investigate the claim further and will reimburse any expenses incurred by Comcare.

If a claim is received in relation to a condition sustained from exposure to radiation following the British Nuclear Tests in Australia, the following steps should be undertaken:

**Step 1: Notify Scheme Policy and Design**

On receipt of a claim, a Claims Manager should notify Scheme Policy and Design of the claim and provide them with relevant claim details, including:

- place – where the employee worked
- dates – when they worked at that location(s)
- activities – what their employment involved
- exposure – employee's statement on when they were exposed.

**Note:** A claim from a non-Commonwealth employee should not be entered into Pracsys but forwarded straight to Scheme Policy and Design.

**Step 2: Investigate the claim**

The Claims Manager should investigate the claim further, including evidence confirming the employee's employment at the relevant time with the relevant employer, and refer any information to Scheme Policy and Design.

**Note:** Scheme Policy and Design will approach the Department of Industry, Innovation and Science for confirmation of the employee's involvement in the nuclear test program and any details of exposure to radiation. If exposure is confirmed, Scheme Policy and Design will contact the Australian Radiation Protection and Nuclear Safety Authority (ARPANSA) for estimates of the employee's exposure levels.

**Step 3: Scheme Policy and Design will contact Claims Management**

The Claims Manager should obtain medical evidence regarding the relationship between the level of exposure (as provided by Scheme Policy and Design) and the claimed condition(s).

**Note:** In addition to medical information from the employee's treating practitioner, an oncologist report should be obtained. The Peter McCallum Institute in Melbourne specialises in these types of matters.

**Step 4: Determine liability**

Following review of all relevant evidence, the Claims Manager will determine liability in respect of the claim. The Claims Manager must inform Scheme Policy and Design of the determination.

**Note:** Claims involving radiation exposure should first be considered under section 7(1) of the SRC Act before other relevant provisions are considered.

**Step 5: Notify Scheme Policy and Design**

Claims Management must notify Scheme Policy and Design of any appeal requests and their outcome.

The Report of the Royal Commission into British Nuclear Tests in Australia provides relevant information that may be of use when determining radiation-related claims. Additional information on Maralinga and British nuclear testing in Australia is available on the Department of Industry, Innovation and Science's website.

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# Written notice of injury

## Written notice of injury

Section 53 of the SRC Act states an employee must provide a written notice of their injury to the relevant authority as soon as practicable after the employee becomes aware of the injury.

Lodgement of a Workers Compensation Claim Form is usually the way Comcare is given notice of an injury.

**Notice requirements for claims that fall under earlier legislation**

There are also notice requirements under the 1971 and 1930 Acts. Decision-makers should consult the relevant legislative provisions to determine whether the applicable notice requirements have been satisfied.

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## Notice to relevant authority

Comcare is the relevant authority for injured Commonwealth government employees.

Normally, an employee gives notice of an injury to their employer (by completing an incident report or notifying their supervisor, for example) at the time the injury was sustained. This is generally considered sufficient notice.

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## As soon as practicable

Section 53 of the SRC Act requires that written notice of an injury must be given to Comcare 'as soon as practicable' after the employee becomes aware of the injury.

The SRC Act does not define the phrase ‘as soon as practicable’. The Federal Court in *Pacific Manning Company Pty Ltd v Barton [2013] FCA 498* (at paragraph 37, considering the equivalent provision in the *Seafarers Rehabilitation and Compensation Act*) observed that ‘employees are required to give notice where and when they are aware that they have suffered an injury that causes incapacity for work or impairment and therefore attracts the benefits of the Act’.

Usually, employers have their own internal mechanisms in place for their employees to follow when reporting workplace accidents, incidents, injuries, diseases and other occurrences. An employee's obligation to notify their employer of an injury, disease or workplace occurrence is usually when the injury was initially sustained. Normally, this would be through completion of an incident report. However, ailments or long-latency conditions may take longer to develop and to obtain a diagnosis and so may not be reported in the same way.

Section 53(3) provides that compliance with the notice requirement may be deemed where the employee fails to provide notice of the injury ‘as soon as practicable’, and

- the failure *does not* result in prejudice to Comcare, or
- the exceptions set out in section 53(3)(c) apply (see below).

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## Prejudice

Section 53(3)(c) provides that compliance with the notice requirement will be deemed where Comcare 'would not, by reason of the failure, be prejudiced if the notice were treated as sufficient notice...' or where an exception applies.

Prejudice to Comcare is most likely to be established where the delay in providing notice is significant and Comcare is unable to adequately investigate a claim for compensation as a result (i.e. unable to locate or obtain records, medical evidence, witness statements, etc, which may have been available if notice was provided earlier). Where Comcare has obtained relevant records, medical evidence, witness statements etc despite the delay in notice, any prejudice will likely be 'cured'.

In *Saunders and Comcare [2015] AATA 111*, the Tribunal held that Comcare was prejudiced by a six-year delay to a claim for mental injury. The delay meant the loss of opportunity to contemporaneously interview witnesses, that witnesses' recollections of events were affected by the passage of time, that medical examination was delayed, and the loss of opportunity for medical treatment and rehabilitation affected the applicant and resulted in increased potential costs to the SRC Act compensation scheme.

In contrast, the Tribunal rejected Comcare's claims of prejudice in *Metcalf and Comcare [1998] AATA 998* (6-year delay) and *Holmes and Comcare [2001] AATA 290* (8-year delay) on the basis that there was sufficient medical evidence for Comcare to determine the claims.

**Note:** The SRC Act is beneficial legislation, and the prejudice provision and exceptions set out in section 53(3) are alternative tests. Decision-makers are required to take a beneficial interpretation of any failure to provide notice. Notice may therefore be deemed under 53(3)(c) where an exception applies, even where there is substantial prejudice to Comcare because of any delay in providing notice.

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## Exceptions where notice is deemed to have been given

If an employee fails to give notice of their injury, section 53(3) of the SRC Act provides that compliance with the notice requirement will be deemed where the non-compliance was due to a specified cause, being:

- **death or absence from Australia** – only needs to contribute to the failure to provide notice and does not have to the be sole cause of failure
- **ignorance** – not knowing about the right to claim compensation at all or for a particular injury
- **mistake** – acting on the basis of incorrect knowledge or facts
- **any other reasonable cause** – if an employee provides another cause (other than death or absence from Australia, ignorance or a mistake) for their failure to provide notice of injury, the reasonableness of the cause will need to be considered.

'Any other reasonable cause' could include receiving medical treatment via another mechanism, or extreme ill health.

As noted above, compliance with the section 53 notice requirement may be established under one of the above exceptions even where there is substantial prejudice to Comcare as a result of the delay.

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# Injury and disease under the SRC Act

## Introduction to employment relationship

Comcare determines liability for an 'injury' under the SRC Act. Section 14(1) states that Comcare is liable to pay compensation to employees, following written notice of injury, for an 'injury' that results in:

- death
- incapacity for work, or
- impairment.

The definition of 'injury' is found in section 5A and includes diseases. The detailed definition of 'disease' is found in section 5B. As Claims Manager, you must determine liability by considering the kind of injury claimed and whether it meets the requirements of section 5A. That is, whether:

- in the case of an injury (other than a disease): the injury arose **out of, or in the course of**, the employee's employment, or
- in the case of a disease: the ailment was **contributed to, to a significant degree**, by the employee's employment.

This is known as the employment relationship to the injury.

Definition of employment: The SRC Act does not provide a definition of 'employment' but it has been interpreted broadly by the courts. The contributing employment factor must be either an event or occurrence in the course of the employment, or some characteristic of the work performed or the conditions in which it was performed (*Federal Broom Co Pty Ltd v Semlitch [1964] HCA 34 110 CLR 626*).

This page provides guidance on establishing the employment relationship to the injury or disease.

For more information:

- refer to the following Claims Manual pages:
  - Employees under the SRC Act
  - Written notice of injury
- Refer to the following scheme guidance:
  - Injuries arising out of or in the course of employment
  - Definition of injury and disease
  - Injury in an interval or interlude during an overall period or episode of work
  - Travel and recess provisions
  - Claims for injuries sustained at the boundary of a place of work
  - Claims for injuries and diseases arising from home-based work
- Complete the following online legislative training module:
  - Determining liability

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## Establishing the condition through medical evidence

In order to establish the employment relationship, you must establish the link between the **condition** and the **cause**. This requires that you establish whether the medical evidence supports that the employee's condition has occurred as claimed.

Medical evidence can include, but is not limited to:

- relevant clinical notes
- medical reports from a treating legally qualified medical practitioner (LQMP)
- medical report as a result of an examination arranged under section 57
- diagnostic tests, and other assessments that may have been conducted such as hearing tests or imaging results.

See Obtaining a medical certificate and Obtaining a medical report or clinical notes for more information.

Information that should be provided in the medical evidence includes, but is not limited to:

- diagnosis and prognosis
- history of the condition
- hereditary and lifestyle contributing factors
- nature and extent of any pre-existing or underlying condition(s)
- contributing factors, including those that are not employment-related
- opinion on stated cause and its link to the condition
- any other matters affecting the employee's health.

You also need to use the medical evidence to establish if the condition sustained by the employee constitutes, as defined under the SRC Act:

- an injury
- a disease, or
- an aggravation of either an injury or a disease (see Aggravations, accelerations and recurrences for more guidance).

This will determine the legislative test that will need to be met when assessing the employment relationship.

Characterising a condition as an injury or a disease under the SRC Act is a vital step in determining what path an investigation will need to take when assessing the employment relationship.

Once you have established the type of 'injury' or condition the employee is claiming for, you must establish the employment relationship to the condition. The following sections provide guidance on establishing the employment relationship for injuries other than a disease, disease claims, and injuries sustained during an interval or interlude.

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# Injury (other than a disease) claims

An injury (other than a disease) is an identifiable physiological or psychiatric change, or disturbance of the normal physiological state. There can be overlap between an 'injury (other than a disease)' and a 'disease'. However, an injury (other than a disease) can be described as a 'definite or distinct…change for the worse' that may be 'sudden or dramatic' but is at least 'identifiable' (*MRCC v May [2016] HCA 19*). For example, a broken wrist resulting from a fall.

For an injury (other than a disease) to be compensable, you must be satisfied that the injury '**arose out of, or in the course of**, the employee's employment' (section 5A(1) of the SRC Act). These two components need to be considered separately, to determine which of the two (if either applies) is relevant to the claim.

## Arising out of employment

*'Arising out of employment'* is a **causal** test that requires a connection between the injury and the employee's employment. This means that the injury occurred as a result of, or had some connection with, the employee's performance of their work duties.

**Example:** An employee works in a factory warehouse setting. While fulfilling their regular duties of lifting, moving and stacking boxes in the warehouse, they cut their hand while lifting a plastic box with a damaged side onto a shelf. The injury arose directly out of the employee's employment as they were undertaking work activities in their workplace at the time of the injury.

**Example:** An employee's clothes were saturated by sodium chlorate during working hours. That night at home, the employee's clothes ignited from the exposure to an open fire because of the existence of dried chemicals on the clothes. While the injuries occurred at home, they arose out of employment.

## In the course of employment

*'In the course of employment'* is a **temporal** test requiring only that the injury happened while the employee was at work, or, was engaged in an overall period of employment. There is no need for employment to have caused the injury.

**Example:** An employee sustains an injury when they slip on a section of wet floor while accessing the bathroom at work. As the employee was at their place of work for the purposes of work and was injured undertaking an activity that is reasonably expected to occur during the workday, the employee's injury is taken to have arisen in the course of their employment.

**Example:** An employee was required to travel interstate during a two-week period and accommodation in a unit was paid for by their employer in a remote region. In the morning, the employee decided to undertake light exercise at their accommodation and sustained an injury.

It would have been reasonably expected in the circumstance for the employee to exercise at their unit. This would be similar to an activity where an employee sustains an injury while showering, eating or going to the bathroom.

The employee had yet to officially start work. Despite this, the claim could be accepted on the basis that the injury was sustained **in the course of employment** under section 5A(1)(b). This is because there was a temporal connection between the injury and employment.

## Examples of injuries found NOT to have arisen out of or in the course of

## employment

The following are examples of claims that were found not to have met the employment relationship. That is, they were found not to have arisen out of, or in the course of, employment.

**Example:** An employee claims that they got out of their vehicle upon returning home from their office, and then fell while walking to the front door of their home. They sustained a fractured ankle from the fall. They claimed that the work equipment they were carrying caused the fall and fractured ankle.

Subsequent investigations indicated the injury occurred outside of working hours and the employee was not on call at the time (*no temporal connection – 'in the course of employment' does not apply*). A review of the footpath indicated it was not level. That was what caused the employee to lose their footing, rather than any involvement from use of work equipment (*no causal connection – 'arising out of employment does not apply'*).

The claim is not compensable as it does not fit within the scope of arising out of or in the course of employment under section 5A(1)(b) or section 6 of the SRC Act.

**Example:** An employee sustained injuries when they stumbled on uneven pavers and fell onto the ground in a car park after they finished their shift. The car park was not part of the employer's lease agreement, and the pavers where they sustained the injuries were accessible by the public at large.

The employee was not accessing or egressing to or from their employment within the boundaries of their workplace, as they had left the building. The employment relationship of 'arising out of or in the course of employment' contained in section 5A is not met – the employee had finished work for the day (*no temporal connection – 'in the course of employment' does not apply*) and was not there to undertake work duties or for a work-related reason (*no causal connection – 'arising out of employment' does not apply*).

The employee was also on a journey home to their residence when they sustained the injuries. Section 6(1C) makes clear that travel between the employee's residence and usual place of work is not considered to be taken at the direction or request of the employer. So, any injuries sustained during such travel are not compensable.

## Where there is uncertainty around the employment relationship

If a connection between the claimed injury and employment is unclear, section 6(1) of the SRC Act provides a list of circumstances which satisfy the 'arising out of, or in the course of, an employee's employment' test. Section 6(1) extends and clarifies the circumstances in which an injury (other than a disease) may be compensable. See Injuries under section 6(1) for detailed guidance.

When applying section 6(1), you must also consider whether sections 6(1C) or 6(3) apply to clarify or disqualify the circumstances of the claimed injury from the scope of 'employment'.

If the circumstances do not fall within section 6, or are excluded under section 6(3), you need to consider whether the injury otherwise 'arises out of, or in the course of employment' under Section 5A. Where the connection to employment is uncertain or the claim raises unusual facts, you must escalate the matter to your Assistant Director. They may refer the claim to Legal Group for advice. This is particularly important in applying the 'arising out of' test.

**Section 6 deeming provisions not applicable if section 5A(1) is satisfied:** The full court of the Federal Court in *Linfox Australia Pty Ltd v O'Loughlin [2018] FCAFC 173* clarified that the deeming provisions (and exclusions from those deeming provisions) in section 6 of the SRC Act do not apply if a decision maker determines, under section 5A, that the claimed injury 'arose out of, or in the course of, employment.'

That is, if you determine there is an employment relationship under section 5A(1), section 6 cannot be used to reject liability for the claim.

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# Disease claims

Under the SRC Act, a 'disease' is an ailment, or aggravation of an ailment, that has been contributed to by the employee's employment to a particular degree. An ailment will usually have a gradual onset and can progressively worsen over time.

The test applied for disease claims depends on the date of injury:

- before 13 April 2007: employment must have contributed to the claimed condition to a **material degree**
- on or after 13 April 2007: employment must have contributed to the claimed condition to a **significant degree**.

Under section 5B(3), 'significant degree' means a degree that is substantially more than material (*Comcare v Power [2015] FCA 1502*). You must therefore be satisfied that there is a **very strong connection** between the employee's claimed condition and their employment.

For more guidance on specific circumstances related to disease claims, refer to the Considerations relevant to disease claims page.

## Establishing employment relationship for disease claims

In considering whether employment contributed to a significant degree to a claimed condition, section 5B(2) states that the following matters may be taken account:

(a) the duration of the employment
(b) the nature of, and particular tasks involved in, the employment
(c) any predisposition of the employee to the ailment (being the disease) or aggravation
(d) any activities of the employee not related to employment
(e) any other matters affecting the employee's health.

This list is not exhaustive and decision makers may take other relevant matters into account.

In cases where there are both work-related and non-work-related factors that may have contributed to an employee's claimed condition, you will need to assess the information available and determine which factors significantly contributed to the employee's condition. This requires you to consider the following:

- Do the causative factors fall within the meaning of 'employment'?
- What impact did those employment factors have on the condition?
- Are there any non-employment causative factors?
- What impact did those non-employment causative factors have on the condition?

In cases where there are work-related factor(s) and non-work-related factor(s) that significantly contributed to the employee's condition, employment need not be the only significant factor in order for an employee to be entitled to compensation (*Havnen and Comcare [2010] AATA 535*). That is, you can have multiple significant factors, both work-related and non-work-related and still be entitled to compensation.

**Asbestos claims:** Further advice should be sought from your Assistant Director and, through them, the Legal team, about disease claims that involve contributing exposure to asbestos in Commonwealth, licensee or other employment (i.e. Telstra, Australia Post, Australian Defence Industries, an exit agency or a Commonwealth agency that has been privatised).

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# Injuries sustained during an interval or interlude

An injury sustained 'in the course of employment' does not need to have a direct causal relationship to an employee's work duties (i.e. liability may arise even if the employee was not at work at the time of injury). The High Court in *PVYW v Comcare [2013] HCA 41* clarified that an injury may also be sustained 'in the course of employment':

- during an interval or interlude within an overall period or episode of work - for example, a short break within a workday (outside of an ordinary recess) or a long break such as a night, or nights, and within a larger period (e.g. staying overnight at a hotel as part of a work-related trip)
- between two discrete periods of work - for example, the period between the end of one working day and the start of the next for an employee performing work at a usual location (e.g. where an employee is 'on call').

In determining whether an injury has the requisite connection to employment, you must always have regard to the general nature, terms and circumstances of the employee's employment and not merely to the circumstances of the injury itself (*Hatzimanolis v ANI Corporation [1992] HCA 21*).

## Injuries sustained during an 'overall period' or episode of work

Injuries occurring in an 'interval or interlude in an overall period of employment' will have the relevant connection to employment if:

- the employee was '**induced or encouraged**' by the employer to **undertake the particular activity** or **be in the place** that resulted in their injury (*Hatzimanolis v ANI Corporation*; *PVYW v Comcare*).

In rare circumstances, an injury in an 'interval or interlude in an overall period of employment' might be attributable to both an **activity** and a **place** (see: *Dring v Telstra Corporation Ltd [2021] FCAFC 50*). You must give careful consideration to the particular facts and circumstances of injury to identify whether the activity or the place was the cause of injury, and subsequently whether the causative factor was something induced or encouraged by the employer.

To establish whether the injury (other than a disease) (during an interval or interlude) was sustained 'in the course of employment', follow this process:

1. If the employee was not engaged in actual work, determine what the employee was doing when they were injured.
2. If the employee was undertaking an **activity** when they were injured, consider whether the employer induced or encouraged the employee to undertake that activity.
    a. If so, the injury is likely to have been sustained in the course of employment. You don't need to consider whether the employer induced or encouraged the employee to be present at a

place.

3. If not, consider whether the employer induced or encouraged the employee to be present at the **place** where they were injured.
    a. If so, the injury is likely to have been sustained in the course of employment.
4. If not, the injury is not likely to have been sustained in the course of employment.

**Example of activity-related injury:** An employee is required to travel interstate for 2 days to conduct workplace audits. They are staying at a hotel of their choice, within the requisite travel allowance.

During the night the employee rolls over while asleep and hits their eye on the bedside table while in their hotel bed. The employee sustains a split eye that requires stitches, as well as a contusion to their face.

The two-day work trip constitutes an 'overall period of employment' and the overnight period between workdays constitutes an 'interval or interlude'. The activity of sleeping is impliedly induced or encouraged during an overnight work trip (i.e. an employer would expect an employee to rest at night). The injury is therefore 'in the course of employment' and liability is accepted.

For further guidance see the scheme guidance 'Injury in an interval or interlude during an overall period or episode of work

## Injuries sustained during discrete periods of work

Injuries occurring in an interval or interlude **between discrete periods of work** are less likely to have occurred 'in the course of employment', but they can still satisfy that test. In these circumstances, 'something more than inducement or encouragement is needed' to establish causation (*Hatzimanolis v ANI Corporation*). This is most often seen in cases where an employee is injured while 'on call' or otherwise required to be readily available for work at the time of injury.

## Work related travel: short-term and long-term travel, relocations, deployments, and postings

Short-term relocations or work-related travel will generally be an 'overall period of employment'. See: *Hatzimanolis v ANI Corporation* (a three-month relocation to a mining camp), *Westrupp v BIS Industries Limited [2015] FCAFC 173* (a two-week relocation to a mining camp) and *Comcare v PVYW [2013] HCA 41* (a work-trip). Liability for injuries sustained when the employee is not actually at work during these trips will be determined through the 'induced or encouraged' test (see Overall period or episode of work).

A long-term relocation for work (often referred to as a deployment or posting) is not generally considered an 'overall period of employment'. However, this must be determined on a case-by-case basis having regard to the nature, terms and conditions of the employee's employment. This includes but is not limited to:

- the length of the deployment or posting
- the remoteness of the location
- the nature of the work undertaken by the employee at the new location
- whether the employee has set hours of work, and discretion over the use of their personal time
- whether the employee is staying in accommodation paid for or arranged by the employer
- whether a partner or children relocate with the employee
- whether the employee's mail is redirected to their new location

- whether meals are provided or paid for by the employer
- whether there is an expectation or support for the employee to relocate their possessions to the new location.

This list is not exhaustive, and the circumstances of a particular matter may raise other considerations. No single factor will be determinative in identifying whether an employee on a long-term posting is in an 'overall period of employment'. You will need to consider all the evidence and weigh all relevant factors when making a decision.

Generally, the greater the control an employee has over their living arrangements and day to day activities, the more likely it is that the employee will not be in an 'overall period of employment'.

You may be satisfied that the posting or deployment was not an 'overall period of employment'. In that case, you will still need to consider whether the claimed injury has the required connection to employment under section 5A of the SRC Act. This may also include consideration of whether any of the circumstances outlined in section 6 apply. See Injuries under section 6(1) for guidance.

**Section 6(1) circumstances:** Where an employee claims compensation for an injury suffered in a circumstance listed in section 6(1) of the SRC Act, the considerations above do not apply. This is because the circumstances in section 6(1) are all circumstances and places where the injury is deemed to have arisen out of or in the course of employment.

**Example of injury under section 6(1)**: An injury occurring during a lunch break (being an ordinary recess) is captured by section 6(1)(b). Therefore, the injury will be deemed to have occurred out of or in the course of employment. Any other factors, such as being deployed, do not need to be considered.

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# Injuries under section 6(1)

## Introduction to section 6(1) of the SRC Act

For an injury to be compensable under the SRC Act, the injury must be found to have arisen out of, or in the course of, the employee's employment. This test is set out in section 5A(1) of the SRC Act. For further guidance, refer to the Injury and disease under the SRC Act page.

The SRC Act defines some circumstances where an injury will be deemed as having arisen out of, or in the course of, employment. Section 6(1) of the SRC Act sets out these circumstances.

When determining liability for injury you must consider both section 5A(1) and section 6(1)

All new claim assessments and determinations must rely on evidence, including documents and information on the claim file. Consult the pages in Gathering claim information for help with information gathering to support your assessment and determination.

Relevant training includes the online legislative training module Determining liability – compliance and injury claims

This page provides guidance on applying the subsections of section 6(1), including:

- Injury as a result of an act of violence – section 6(1)(a)
- Injury sustained at a place of work – section 6(1)(b)
- Temporarily absent from work on an ordinary recess – section 6(1)(b)
- Temporarily absent from place of work – section 6(1)(c)
- Injuries resulting from travel – sections 6(1)(d), (ea), (g) and section 6(1C)
- At a place of education except while on leave without pay – section 6(1)(e)
- Declared places and employees working outside Australia – section 6(1)(h) and (i)
- Exclusionary provisions that apply when considering claims under section 6(1)

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## Injury as result of an act of violence – section 6(1)(a)

Section 6(1)(a) of the SRC Act provides coverage for:

- an injury sustained as a result of an act of violence, that **would not have occurred** but for the employee's employment, or the performance by the employee of the duties or functions of their employment.

It is irrelevant that an employee is not at their place of work when the act of violence occurs. The fact an employee's employment provokes an attack provides a direct and causal link between work and the injury.

### The performance of work duties or functions

The work duties or functions an employee is required to carry out as part of their employment may result in an act of violence being perpetrated. In this situation, the assailant will usually know, or know

of, the employee and will commit an act of violence as a result of direct or indirect dealings with the employee.

**Example:** A Centrelink employee is assaulted on the weekend by a client whose benefits they disallowed during the previous week. The violence occurred as a result of the duties of the employee's employment.

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# Injury sustained at a place of work – section 6(1)(b)

Section 6(1)(b) of the SRC Act provides coverage for an injury sustained while an employee was at their place of work for the purposes of that employment.

**Example**: An employee on maternity leave brings her baby to the office and is injured. This section does not apply because while the employee was at her place of work, she was not there for the purposes of carrying out the duties of her employment.

This section also provides coverage for an injury sustained while an employee was temporarily absent from their place of work during an ordinary recess.

**Important:** There may be claims received where injuries are sustained while the employee is entering or exiting their place of work, and it is difficult to establish the connection with employment (referred to as 'boundary claims'). For further information, see the scheme guidance Claims for injuries sustained at the boundary of a place of work. Escalate these claims to your Director and seek legal advice to support consistency in decision making.

## Place of work

Section 4(1) of the SRC Act defines 'place of work' as any place an employee is required to attend for the purpose of carrying out their duties. The employee needs to be 'required' to attend that particular place for the purpose of carrying out the duties of their employment.

A place of work may encompass more than the immediate working environment the employee occupies while performing work activities. The 'place of work' may also extend to 'common access areas' of a building in which the workplace is located. This might include foyers, lifts and stairwells which an employee is required to use to gain access to and from their work area. Injuries in these circumstances are generally boundary claims. For more information on boundary claims, see the section below on Assessing whether an injury occurred at a place of work, and see also Scheme guidance Claims for injuries sustained at the boundary of a place of work.

As Claims Manager, you will be required to establish whether the place where the injury occurred (i.e. the stairs, foyer, lifts, car park etc.) meets the definition of a 'place of work'. A relevant consideration for decision makers is the employer's level of control over the location when assessing whether the location is a 'place of work'.

## Home-based work

Home based work is an arrangement where an employee, with the agreement of their employer, works from home. An employee's 'place of work' is extended to include:

- the work area used in the home, and
- those areas where the employee undertakes activities reasonably incidental to their employment.

To assist in determining whether an employee has sustained an injury during hours of home-based work, you should:

- ensure the time and date of injury are provided by the employee
- obtain a copy of the formal or informal arrangement made between the employee and employer as this will establish hours of work for the employee and specific work site details
- if available, obtain a copy of any employer policies governing home-based work (these are helpful by providing context and parameters around individual agreements, particularly if there is no written individual agreement)
- confirm with the employer that the home-based work site, including equipment used, conforms with health and safety standards, and
- establish how the injury occurred and consider whether any exclusionary provisions apply.

Sometimes there is no formal working from home arrangement in place. In that case, you should consider whether there was an informal, ad hoc, written or verbal agreement between both parties for the employee to work from home.

For further information, see the scheme guidance Claims for injuries and diseases arising from home-based work.

## Assessing whether an injury occurred in a place of work

If an employee claims for an injury sustained when entering or exiting a place or work, this is known as a boundary claim. See scheme guidance Claims for injuries sustained at the boundary of a place of work for more information about assessing these claims.

There are several factors that may be relevant in establishing whether an employee's injury occurred at their 'place of work', such as:

- the degree of control exercised over the area by the employer. This can include whether:
    - the injury occurred outside or inside the building
    - the area is owned by or leased to the employer
    - there are other tenants, or the employer has sole occupation of the building
    - the public have unrestricted or restricted access to the area
    - the degree of proximity between the area and the workplace
    - the area forms part of the common areas of the building (i.e. foyers, lifts, toilets, stairwells)
    - the employer had either legal or practical control of the area (i.e. Work, Health and Safety (WHS) obligations, responsibility for maintenance/cleaning of the area).
- the employee's start and finish work times for the day
- the reason the employee was at the place where the injury was sustained and whether there is a causal link to employment
- whether the employee was required to carry out duties as an employee in the area
- whether there was an increased risk or danger associated with the place where the injury occurred, such as a slippery surface or trip hazard.

None of the above factors or circumstances are determinative on their own. It is the combination of factors which determines whether an employee was at their place of work where the injury occurred. Each claim must be assessed on the individual merits of the case and the evidence provided.

## Not reached place of work

If an employee has not reached their 'place of work', they may still be travelling to work. Section 6(1C) of the SRC Act is clear on this circumstance: Travel between an employee's residence and their 'usual place of work' is not considered to be taken at the direction or request of the employer. It is therefore not covered for compensation purposes in any circumstance.

'Usual place of work' is not defined in the SRC Act. A 'usual place of work' is considered by Comcare to be one which is regularly attended and required for work purposes.

Therefore, you may need to confirm with the employer whether the employee was at their 'usual place of work'. This will help you determine if it needs to be considered as a claim involving travel. It should be noted that an employee can have more than one 'usual place of work'. This would be if they are required to attend more than one workplace on a regular basis in the course of their employment. An example may be where an employee works regularly from both the office and from home.

Where an employee works from home as their usual place of work but is required by their employer to attend the office on a particular day or for a particular reason, and is injured whilst travelling to the office, you should discuss the claim with your Assistant Director and refer the claim to Legal Group for advice and to ensure consistent decision-making.

## Evidence to request

Evidence you can request from an employer to assist in assessing whether an injury occurred at a 'place of work' can include, but is not limited to:

- a copy of the lease agreement of the building (if applicable)
- photos and/or a site map with an aerial view of the area/place indicating where the employee was injured
- a copy of an employee's duty statement or an employer's statement detailing whether the employee was required to carry out any of their duties at the place the injury occurred
- details of any staff directives that may have been issued regarding the place in question, such as encouraging people to undertake certain activities there or advising employees to keep away from the area
- employee handbooks, induction material, or training documents
- WHS documents, site safety plans, evacuation points, any risk assessments of the area/place employee was injured, hazard or incident reports.

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# Temporarily absent from work on an ordinary recess – section 6(1)(b)

Section 6(1)(b) of the SRC Act provides coverage for:

- an injury sustained while an employee was temporarily absent from their place of work during an ordinary recess in that employment.

## Definition of an ordinary recess

'Ordinary recess' is not defined in the SRC Act, and the meaning is instead drawn from the Supreme Court of Victoria decision in *Drummond v Drummond* [1960] VicRp 71. It has been taken to mean a

brief interruption in a workday for rest or refreshment 'that ordinarily occurs at regular times, such as morning or afternoon tea'. 'Ordinary' in this context means a break that would ordinarily be referred to as a recess, rather than what might be considered an 'ordinary' or usual' break for a particular employee or in a particular type of work (*Drummond; Landers v Dawson [1964] HCA 35*; *Demasi and Comcare (2016) AATA 644*).

**A note about the case law cited here**: The *Drummond* decision was relied on by the AAT to come to its findings in *Demasi*. While it is from a state court, it was endorsed by the AAT and carries weight in our jurisdiction. The commentary in *Drummond* was cited with approval by the High Court in *Landers v Dawson* and subsequent AAT decisions.

Whether a break from work is an 'ordinary recess' for the purposes of section 6(1)(b) is to be determined by reference to the facts of the particular claim. Decision makers should identify whether the break taken by the employee at the time of injury was:

- brief
- away from their usual place of work
- generally taken at regular times in the workday, and
- would generally be considered a recess (per *Drummond; Landers; Demasi*).

There is no specific time measure to define 'brief' and there is no requirement that 'regular times in the workday' means that the break is taken at the exact same time every day. Instead, the break from work is determined by reference to what an ordinary person would generally consider to be an 'ordinary recess'.

The case law tends to detail what is **not** an ordinary recess better than what is. For example, in *Landers v Dawson*, regularly taking a break between morning and afternoon deliveries to swim, with the permission of his employer, was not an 'ordinary recess'. In *Demasi*, taking a break 'at any random time of day' 'for the specific purpose of going for a run' was not an 'ordinary recess'.

See also: Claims for injuries and diseases arising from home-based work scheme guidance.

Examples of an ordinary recess include:

- lunch breaks in normal working hours, and
- meal breaks during overtime and shift work periods.

Injuries that occur during an ordinary recess are likely to be compensable unless any exclusions apply. For further guidance on exclusions, refer to the Exclusionary provisions page.

> **Example:** An employee was working from home in their home office. They went to another part of the house and fell, resulting in a fractured wrist. The incident occurred **during lunch time**. The circumstances of the injury would tend towards a finding that the employee was temporarily absent from their place of work during an ordinary recess in employment.

## Leaving the workplace during work hours other than during an ordinary recess

Employees may leave the workplace during the workday to do activities that would not ordinarily be considered to fall within an 'ordinary recess' break. Breaks that are not an ordinary recess include:

- cigarette breaks
- going to buy a coffee
- attending a personal appointment
- going to the post office, and
- other similar breaks where employees leave their 'place of work' during the workday.

Injuries that arise out of these circumstances should be assessed against the 'course of employment test' as it appears in section 5A of the SRC Act, and not under the expanded operation of section 6.

If an employee leaves the workplace during work hours and sustains an injury, you need to consider whether the injury arose in the course of employment (section 5A). When assessing whether an injury occurred in the course of employment, there are several factors that may assist you. These factors can include, but are not limited to:

- where the injury occurred and whether the employee engaged in actual work
- was the employee at a particular place or engaged in an activity when the injury occurred
- whether the activity was a matter for the employee only and not related to the performance of their duties or functions (e.g. taking a cigarette break or going to buy a coffee)
- whether the activity resulting in an injury was induced, encouraged, expected or required by the employer.

In these cases, the activity undertaken by the employee must bear a connection or association with employment.

**Evidence to request**: Evidence that may assist with assessing the factors above can include requesting an employer to provide a copy of their policy/guidelines concerning employees taking breaks.

## Date of injury and the application of section 6(1)(b)

Section 6(1)(b), an employee being temporarily absent from their place of work during an ordinary recess in their employment, has been the subject of amendments. These are detailed in the table below

The date of injury will decide whether an injury (sustained by an employee while they were temporarily absent from their place of work during an ordinary recess) is taken to be compensable under the SRC Act.

| Date of Injury | Coverage | Comment |
|---|---|---|
| 7/12/2011 - to present | Yes | An injury sustained while an employee was temporarily absent from their place of work, during an ordinary recess in that employment, is compensable. |
| 13/4/2007 - 6/12/2011 | No | An injury sustained while an employee was temporarily absent from their place of work, during an ordinary recess in that employment, is **not** compensable.<br><br>The amendment did not affect injuries incurred by an employee during an ordinary recess taken at the workplace, or injuries sustained while the employee is temporarily absent from their workplace |

| | | |
|---|---|---|
| | | undertaking an activity associated with employment, or at the direction or request of the employer. |
| 1/12/1988 - 12/4/2007 | Yes | An injury sustained while an employee was temporarily absent from their place of work, during an ordinary recess in that employment, is compensable. |

See: Scheme guidance – Travel and recess provisions for additional information.

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# Temporarily absent from place of work – section 6(1)(c)

Sections 6(1)(c)(i) and (ii) of the SRC Act provide coverage for an injury sustained while:

- an employee was temporarily absent from their place of work, and was:
    - undertaking an activity associated with the employee's employment, or
    - at the direction or request of the Commonwealth.

## Direction or request

'Direction' or 'request' are not defined in the SRC Act.

The ordinary meaning of the word *direction* is 'guidance, instruction, order, command' and the ordinary meaning of the word *request* is 'the act of asking something to be given or done'.

When considering whether an activity or action is 'at the direction or request of' (the employer), you need to establish:

- whether the activity or action forms a part of the employee's duties and
- whether it is a job requirement.

This may include being *directed* and *requested* to travel to and attend:

- meetings at another place
- training at another place
- work conferences and seminars

rather than being provided with the *option* of attending.

**Example**: An employee is requested by their manager to attend a seminar relevant to their job. While at the seminar, the employee trips and falls, injuring their knee. The employee is likely to be covered for the injury even though they were temporarily absent from their place of work because they were requested by their employer to attend.

## Factors for consideration

Coverage for employees who are temporarily absent from their place of work undertaking an activity associated with their employment are decided on a case by case basis. Particular consideration needs to be given to whether the injury was sustained while the employee was undertaking an activity:

- associated with their employment - section 6(1)(c)(i), or
- at the direction or request of their employer - section 6(1)(c)(ii).

Most situations would concern activities such as participation in social, sporting, or other health and wellbeing activities which may or may not be 'associated with the employee's employment'.

You need to consider if the activity was an employer-sanctioned event. Employer-sanctioned events would include activities such as the official staff Christmas party, employer-organised sporting or health promotion events.

Coverage may not necessarily be restricted to employer-sanctioned events, and could also include events supported by the employer. Here, you need to consider:

- the degree to which the event or activity could be considered to be 'associated with employment' or
- the degree employees were 'directed or requested' to attend.

### Assessing whether a social activity is associated with employment

When assessing whether an activity is 'associated with the employee's employment', there are several factors that may help you to establish the employer's level of support for the activity. These factors can include, but are not limited to:

- where the activity took place
- attendance of a senior officer at the activity
- the level of control the employer has over the activity
- whether transport was provided to attend the activity
- whether employees were directed or requested to attend by the employer
- the level of employer endorsement and encouragement to attend the activity
- whether the employer provided equipment, e.g. uniforms, drink bottles, balls, bats etc
- whether the employer agreed to its name being displayed on any sporting uniforms or other equipment
- whether the employees were considered 'on duty', granted special leave, or required to take leave to participate in the activity, and
- whether the activity was organised during work time and/or utilised work facilities to organise (such as meeting rooms, telephones/e-mail/fax machines) with the support of the employer.

Lunchtime sporting activities may be considered a social activity approved by the employer if they meet the above factors. An employee injured while participating in an activity under these circumstances may be covered under the SRC Act.

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## Injuries resulting from travel – section 6(1)(d), (ea), (g) and section 6(1C)

Several provisions in section 6 of the SRC Act are about injuries that occur while travelling. They outline the circumstances in which such injuries will be treated as having arisen out of, or in the course of, employment. These include:

- travelling at the direction or request of the employer for the purpose of employment, and temporarily absent from the place of work
- travelling between the place of work and place of education
- travelling between the place of work and other places for specified purposes.

These provisions apply to claims with a date of injury on or after 13 April 2007. Travel claims with a date of injury prior to 13 April 2007 are considered under the former paragraphs of the SRC Act in force at the relevant time (see the Federal Register of Legislation for former versions of the SRC Act).

**Note**: Travel between the employee's residence and their usual place of work is taken NOT to be at the direction or request of the employer (section 6(1C)).

## Travel at the direction or request of the employer

Section 6(1)(d) states that an injury arises out of, or in the course of, employment where the injury was sustained while the employee:

> *'... was at the **direction** or **request** of the Commonwealth..., travelling for the purposes of that employment'.*

**Not covered under section 6(1)(d)**

Section 6(2) of the SRC Act states that:

> *'in paragraph (1)(d), the reference to the employee travelling does not include a reference to travelling to or from a place mentioned in section 6(1)(e) or (f).'*

That is, subsection 6(1)(d) does not cover employees travelling to or from a 'place of education' or a place for medical, rehabilitation or payment purposes. Instead, subsections 6(1)(ea) and (g) provide for these instances of travel (see Travelling between place of work and place of education and Travelling between place of work and other specified places for more information).

**Mode of transport used**

The mode of transport used for a journey is generally not a relevant consideration. However, if an employer directs that a particular form of transport is to be used, this may indicate that the employee was directed or requested to travel. In this circumstance, you would need to consider whether the employee had a choice in the mode of transport used.

| |
|---|
| **Example**: Senior management requests all employees attend the agency Christmas party. Attendance is not mandatory, but it is made clear it is preferable, and staff are strongly encouraged to attend. In this case it is likely the travel to the event will be found to be at the direction or request of the employer. |

| |
|---|
| **Example**: Human Resources sends an all-staff email advising of an upcoming agency sporting day open to employees of the agency to attend. Attendance is completely voluntary and there is no pressure to attend. In this case it is unlikely the travel to the event would be found to be at the direction or request of the employer. It was the employee's choice to attend if they wished. |

**Purpose of employment**

Section 6(1)(d) of the SRC Act is limited to travel 'for the purpose' of the employee's employment.

The relevant travel must be directly related to some aspect of the duties the employee engages in

during the course of doing their job, such as travel to collect a piece of equipment, attending a bank to undertake financial duties, or to escort a visiting staff member.

Travel to work-related social events where employees were not directed or requested to attend will likely not be covered. However, travel to a social event may be covered in circumstances where that social activity itself is an employment activity. This may include circumstances where attendance at the social event was encouraged by senior management or is combined with an approved training course or work conference.

## Travelling between place of work and place of education

Section 6(1)(ea) provides that an injury will arise out of, or in the course of, employment where the injury was sustained whilst the employee:

> *'... was travelling between the employee's **place of work** and a **place of education fo**r the purpose of attending that place in accordance with:*

- *(i) a **condition of the employee's employment** by the Commonwealth or a licensee; or*
- *(ii) a **request** or **direction** of the Commonwealth or a licensee; or*
- *(iii) the **approval** of the Commonwealth or a licensee'.*

'Place of education' is not defined in the SRC Act. Comcare considers a place of education to mean a formal place of education (i.e. university, TAFE, or other formal place of education) that is accredited or recognised for the purpose of providing education.

## Travelling between residence and usual place of work is NOT taken to be at the direction or request of employer

Section 6(1C) states:

> *' ... For the purposes of paragraph (1)(d), travel between the employee's residence and the employee's usual place of work is taken not to be at the direction or request of the Commonwealth or a licensee'.*

Travel between an employee's residence and their 'usual place of work' is not considered to be taken at the direction or request of the employer. It is therefore not covered for compensation purposes in any circumstance – but see the following paragraph.

In the scenario where **an employee has been working from home and has been asked to attend the workplace**, the claim should escalated to your Assistant Director or Director and legal advice should be sought to support consistency in decision making.

It is also important to note that a person's journey begins when the leave the boundary of their residence. As specified in section 6(1A) of the Act:

> '*For the purposes of this section:*
>
> *(a) a journey from a place of residence is taken to start at the boundary of the land where the place of residence is situated; or*
>
> *(b) a journey to such a place of residence is taken to end at that boundary.*'

## Travelling between place of work and other specified places

Section 6(1)(g) provides that an injury will arise out of, or in the course of, employment where the injury was sustained while the employee:

> '... *was travelling between the employee's* ***place of work*** *and* ***another place*** *for the purpose of:*

- *obtaining a* ***medical certificate*** *for the purposes of this Act; or*
- *receiving* ***medical treatment*** *for an injury; or*
- *undergoing a* ***rehabilitation program*** *provided under this Act; or*
- *undergoing a* ***medical examination*** *or* ***rehabilitation assessment*** *in accordance with a requirement made under this Act*'.

You will need to establish that the employee was travelling between work and a place for one of the above purposes.

## Assessing claims involving travel

When assessing claims involving travel you need to:

- confirm the starting location and intended destination of the journey
- determine whether the circumstances of injury align with any of the travel provisions under section 6(1) of the SRC Act, and
- consider the specific requirements of the relevant provision against the facts of the particular claim.

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# At a place of education except while on leave without pay – section 6(1)(e)

Section 6(1)(e) of the SRC Act provides an injury shall be treated as having arisen out of, or in the course of, employment in the following circumstances: The injury was sustained while an employee was at a place of education, except while on leave without pay, in accordance with:

- *(i) 'a* ***condition of the employee's employment*** *by the Commonwealth or a licensee; or*
- *(ii) a* ***request*** *or* ***direction*** *of the Commonwealth or a licensee; or*
- *(iii) the* ***approval*** *of the Commonwealth or a licensee.'*

When assessing this provision, you should obtain information to confirm whether the above requirements are met. Each of these requirements is discussed below.

**Place of education** – see Travel between place of work and place of education for the definition.

## Attendance as a condition of employment

'A condition of employment' indicates there is an inability or restriction to continue with employment without attendance at the place of education. This could include positions with a mandatory requirement for a particular university degree, or some other certification or classification.

## Attendance at the request or direction of the employer

This covers situations where attendance at the place of education is initiated by the employer.

### Attendance with the approval of the employer

This provision covers (but is not confined to) attendances initiated by the employee where employer approval is provided. A common situation would be that of completing/undertaking some sort of work-related part-time study, where study leave approval has been provided by the employer.

There is no requirement in the provision that the employer must meet the cost of the course in any way or provide paid study leave. All that is required is that approval for the attendance was given by the employer.

Other situations, such as self-development courses that are work-related, would also fall into this category, as long as employer approval for attendance has been granted.

In determining whether a course is 'work related' you should look at whether the study undertaken is relevant to the employee's duties, and whether the employer was actually required to give approval. Any emails, forms or correspondence from the employer (whether formal or informal) should be looked at to determine:

- why the employer was required to give approval, and
- whether they considered that the education was related to work.

**Note**: A person studying via correspondence at home would not be covered under this provision as they are not at a 'place of education'.

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## Declared places and employees working outside Australia – section 6(1)(h) and (i)

Sections 6(1)(h) and (i) were inserted in the SRC Act and apply from 7 December 2011. They extend coverage to certain employees working in places outside Australia and the external Territories.

Section 6(1)(h) of the SRC Act provides coverage for injuries arising in the following circumstances:

> *'while the employee was, at the direction or request of the Commonwealth or a licensee, at a place:*
>
> *(i) outside Australia and the external Territories; and*
>
> *(ii) declared by the Minister by legislative instrument to be a place to which this paragraph applies*'.

Section 6(1)(i) of the SRC Act provides coverage:

> *'while the employee was:*
>
> *(i) at the direction or request of the Commonwealth or a licensee, at a place outside Australia and the external Territories; and*
>
> *(ii) a member of a class of employees declared by the Minister by legislative instrument to be a class to which this paragraph applies.'*

**Important**: These sections only apply to employees/places as declared by the Minister. See the Declared places and Declared class of employees sections below for up-to-date information.

When assessing these provisions, you should obtain information to confirm whether the above requirements are met.

## Injuries taken to have arisen out of or in the course of employment

Where an employee suffers an injury in circumstances covered by sections 6(1)(h) or 6(1)(i), and where the exclusionary provisions do not apply, the injury will be taken to have arisen out of, or in the course of, their employment, provided the activity they are undertaking at the time of injury does not fall within the exclusionary provisions.

'Compensable' activities could include non-employment related activities such as:

- shopping
- showering
- eating dinner at a restaurant.

**Note:** Despite the extended coverage beyond work hours/duties, each claim must be considered on its merits, according to the facts and against the legislation.

## Declared places

In 2013, the Minister at the time issued a declaration under section 6(1)(h)
that Afghanistan and Iraq are places to which section 6(1)(h) applies. This declaration is effective on and from 16 August 2013.
From 18 December 2024, the Minister has also declared that Ukraine is a place where section 6(1)(h) applies.

## Declared class of employees

In 2011, the Minister at the time issued a declaration under section 6(1)(i) that persons engaged under section 19(1) of the *Australian Civilian Corps Act 2011* are a class of employees to which section 6(1)(i) applies. This declaration is effective on and from 22 December 2011.

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# Exclusionary provisions that apply when considering claims under section 6(1) of the SRC Act

For claims considered under section 6(1) of the SRC Act, compensation may not be payable for an injury that is sustained because the employee voluntarily and unreasonably submitted to an abnormal risk of injury (section 6(3)). This is in addition to the normal section 5A(1), 14(2), and 14(3) exclusionary provisions.

For further guidance, refer to the Exclusionary provisions page.

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# Considerations relevant to disease claims

## Introduction

Section 5B of the SRC Act provides that the test for whether an employee has suffered a disease is currently **whether an employee has suffered an injury, being a disease, that was contributed to, to a significant degree, by the employee's employment**.

For further guidance, refer to the Disease claims section under the Injury and disease under the SRC Act page.

All new claim assessments and determinations must rely on evidence, including documents and information in the claim file. Consult the pages in Gathering claim information, in particular the pages on obtaining medical evidence, for help with information gathering to support your assessment and determination.

This section contains additional considerations relevant to determining liability for disease claims including:

- the legislative test for disease claims with a date of injury before 13 April 2007
- information about psychological ailments and perception
- specified diseases and employment under section 7(1) of the SRC Act including the procedure to assess if section 7(1) applies
- greater incidence of disease under section 7(2) and 7(3) of the SRC Act
- deeming date of injury under section 7(4) of the SRC Act
- long latency diseases
- diseases impacting firefighters including the procedure to assess a firefighter's claim
- presumptive provisions for first responders, including the procedure on assessing a first responder's claim.

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## Legislative test for disease claims with a date of injury before 13 April 2007

The *Safety, Rehabilitation, Compensation and Other Legislation Amendment Act 2007* (SRCOLA 2007) amended the definition of injury contained in section 4 of the SRC Act. Although this definition has been amended, it still applies to claims with a date of injury before 13 April 2007.

Before 13 April 2007, a disease meant any ailment or aggravation of an ailment that was contributed to **in a material degree** by the employee's employment by the Commonwealth or a licensed corporation.

### Establishing employment contribution

In considering whether the employment contributed in a material degree, you must weigh the available evidence. Then you must make a determination as to whether there is a close connection

between the employee's disease (or aggravation of disease) and their employment.

Guidance about the various tests that can be applied against claims when establishing if there is a sufficient employment contribution is provided below. You need to consider if the contribution is material, meaning that there is a close connection, and what the nature of the contribution is.

## Definition of 'material'

'Material' is not defined in section 4(1) of the SRC Act. The Full Federal Court in *Comcare v Canute [2005] FCAFC 262* observed the use of the word 'material' imposes an 'evaluative threshold'. In other words, the employment contribution is measured. The Second Reading Speech 1988 indicates decision makers should establish whether there is a 'close connection' between employment and the contraction or aggravation of a disease to meet the threshold of a material contribution.

## Close connection

For the purpose of working out if there is a close connection between the employee's employment and the ailment or aggravation concerned, section 5B(2) lists the matters that may be taken into account. These include, but are not limited to:

- the duration of the employment
- the nature of, and particular tasks involved in, the employment
- any medical predisposition of the employee to the ailment or aggravation of the ailment
- the activities of the employee not related to the employment
- other matters affecting the employee's health.

## Definition of 'contribution'

Contribution is not defined in section 4(1) of the SRC Act. However, the Second Reading Speech noted that:

> '*In determining whether employment contributed in a material degree to the contraction of a disease in a particular case, regard would be had to whether the employment in which the employee was engaged carried an inherent risk of the employee contracting the disease in question and whether some characteristic or feature of the employment tended to cause, aggravate or accelerate the disease.*'

It can be seen that the mere fact of being employed does not, of itself, constitute a contribution.

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# Psychological conditions or ailments - perception

In the case of psychological ailments, the employee's perception must be considered. An actual event that occurs in the workplace may create a perception in the mind of the employee which contributes to the onset of a psychological ailment. From the Federal Court decision in *Wiegand v Comcare [2002] FCA 1464*, for perception to give rise to liability:

i. the employee must have been exposed to some incident or state of affairs in the course of their employment, to which they would otherwise not have been exposed
ii. the incident or state of affairs actually occurred, and created a perception in the mind of the employee, and

iii. the employee's perception contributed, to the relevant degree, to the claimed ailment or aggravation of an ailment.

It does not matter whether another person would consider the perception to be reasonable, only that the employee reasonably held the perception as a result of the incident or state of affairs.

The perception does, however, likely need to arise directly from the incident or state of affairs without the employee creating a step or series of logic steps from the incident or state of affairs to the perception. Further, there needs to be a perception of what has occurred and not an incorrect statement of fact.

You need to assess whether the employment itself contributed, in a significant degree (or material degree if pre-13 April 2007) to the onset (or aggravation) of an ailment. This is a question of fact. The causative events, nature of the perception, the disease, and its relationship to the employment will all need to be considered.

When considering claims for compensation for a psychological ailment, you should:

- identify the nature of the claimed condition
- identify the event(s) that are claimed to have caused or contributed to the condition
- identify what the employee's perception of the event(s) was
- obtain medical evidence regarding what it is about the employee's perception that significantly contributed to the disease
- obtain medical evidence regarding what impact the event(s) had on the employee's perceptions. That is, was the event a significant (i.e. substantially more than mere) contributing factor
- obtain medical evidence relating to whether or not the perceptions were a part of the disease or any other pre-existing condition or personality traits. That is, did the disease cause the employee's perceptions such that either there is possibly no new ailment or no significant contribution from employment to a new ailment or an aggravation.

You must then weigh the evidence obtained and assess whether the employment caused or aggravated the disease. That is, whether the employment was more than a mere contributing factor, and to what extent the employment caused or aggravated the disease.

For further guidance, complete the online legislative training module Determining liability – disease claims

**Example 1 - initial liability accepted**

An employee is working on a team project where they are required to collaborate with others. One of their colleagues, who is not their supervisor, makes changes to the employee's first draft of a presentation. The employee instantly feels criticised and targeted by their colleague and attends their general practitioner that same day stating they are too anxious to return to work. They report that this is not the first time the colleague has made changes to their work. The general practitioner makes a diagnosis of adjustment disorder. The Claims Manager determines that initial liability should be accepted because an ailment was sustained and the employee's perception that their colleague was criticising and targeting them while performing their employment duties significantly contributed to the onset of the adjustment disorder.

**Example 2 – initial liability accepted – sick mind made sicker**

An employee submits a claim for an aggravation of major depressive disorder resulting from communication challenges between the employee and their supervisor. The employee tells their general practitioner that they feel unsupported by their supervisor who does not provide clear guidance for tasks and fails to answer their phone. Comcare receives a statement from the supervisor who disputes the employee's assertions but confirms that a key meeting (from which the majority of the perceptions came from) did occur. The available medical information states that the employee has pre-existing major depressive disorder, however clinical notes also indicate that there was an increase in medication dosage immediately following the workplace interactions alongside the incapacity for employment. There is no information to suggest that the pre-existing condition caused the employee to perceive or interpret the events incorrectly. The Claims Manager accepts initial liability on the basis that the employee's employment significantly contributed to them sustaining an aggravation of major depressive disorder.

**Example 3 - initial liability denied – sick mind creating a perception**

An employee is working as a receptionist when a customer who is heavily tattooed raises their voice at the employee. The employee perceives this to be a threat for their physical safety and experiences a PTSD-like trauma episode and is unable to finish their shift. The available factual and medical information demonstrates the employee has pre-existing PTSD from their previous role as a police officer where they were held at gun point by a heavily tattooed man.

Their treating psychiatrist reports that the employee's PTSD is often triggered by exposure to people with tattoos, but a distinct adjustment disorder has been caused by this incident. The Claims Manager determines that initial liability for the adjustment disorder should be denied, on the basis that while the employee was at work when they experienced symptoms, work was merely the setting for the onset of an ailment, with the pre-existing PTSD heavily influencing the psychological reaction to the incident. It could not be established that the employee's employment had significantly contributed to the adjustment disorder.

**Example 4 - initial liability denied – perception meets reality test however denied on RAA**

An employee makes a claim for an adjustment disorder caused by their supervisor providing constructive feedback on overall performance during regularly scheduled weekly one-on-one catch-ups. The employee tells their general practitioner that they feel bullied by their supervisor. They also report panicking before the catch-ups and anxious distress. The employer conducts an investigation into the bullying allegations and makes a finding that the supervisor did not bully the employee. The employer confirms that the catch-ups did occur and the supervisor did provide general feedback during these meetings, which included discussion of informal performance improvement targets and expectations regarding increased work quality. The Claims Manager finds that employment significantly contributed to the onset of the adjustment disorder because the employee's perception that they were bullied during the catch-ups was grounded in reality. However, the Claims Manager concludes initial liability should be denied as the actions performed by the supervisor constituted reasonable administrative action (informal performance management), taken in a reasonable manner in respect of the employee's employment.

**Example 5 - initial liability denied – perception does not meet reality test**

A supervisor was organising a graduated return-to-work program for an employee who was returning to work following treatment for a non-compensable condition. During communications regarding the implementation of the program, the employee suffered an aggravation of their generalised anxiety disorder as they thought the program was designed to demote them. The Claims Manager finds that initial liability should be denied because the employee's aggravation was not caused by a perception about a state of affairs that actually occurred. The employee's perception that the supervisor designed the program to manage them out of their employment was too far removed from the actual state of affairs to be considered as grounded in reality, and therefore the contribution by employment to the aggravation was not significant.

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# Specified diseases and employment – section (7)(1)

Section 7(1) of the SRC Act provides that:

- if a person suffers from a disease that has been specified by the Minister, by legislative instrument, as a disease related to employment of a specified kind, **and**
- the person was, before the symptoms of the disease became apparent, employed in Commonwealth employment of the specified kind, **then**

the employment will be taken to have significantly contributed to the contraction of the disease, unless the contrary is established.

**Note:** This section relates only to the contraction of a disease and not an aggravation of a disease.

## Lists of specified diseases and employments

Since the commencement of the SRC Act, the Minister has specified a list of diseases and employments.

**Legislative instrument for diseases contracted before 1 October 2017**

This legislative instrument lists 28 occupational diseases and employments that involve exposure to risk. It applies to diseases contracted before 1 October 2017.

**Current legislative instrument (for diseases contracted on or after 1 October 2017)**

On 3 October 2017 the Minister issued a legislative instrument declaring a new list of specified diseases (which applies to diseases contracted on or after 1 October 2017.)

There are 44 specified diseases and employments in the current list. Schedule 1 lists the diseases and the required employment duration, where relevant, involving work with a specified person or thing, or contact with or exposure to a specified agent or thing.

Schedule 2 specifies the agent or thing for the purpose of connecting the required employment with the contraction of occupational asthma (item 31 on the deemed diseases list).

The diseases not included in this list should be considered in the usual manner by reference to the definition of disease in Section 5B of the SRC Act. See Disease claims for more guidance.

**Note**: Claims for certain cancers contracted by firefighters are subject to presumptive coverage under section 7(8) of the SRC Act. See Firefighters for more guidance.

## Presumptive legislation

The specified diseases list operates to streamline access to workers' compensation on the assumption that there is a high likelihood that a specified disease is work-related. The effect of this is to reverse the onus of proof once it is established that an employee:

- has contracted a disease that is on the list of specified diseases, and
- was or is engaged in employment of a specified kind before the disease was contracted.

Once these facts are established, an employee is not required to further establish that, on the balance of probabilities, his or her employment significantly contributed to the disease. This is presumed. However, this does not mean that the employee's claim will automatically be accepted. This presumption can be refuted where you have evidence that contradicts the presumed facts.

See Presumptive provisions for first responders for information on PTSD diagnoses for first responders.

**Deemed diseases**

The specified diseases listed in the legislation are sometimes referred to at Comcare as **deemed diseases**. This is because, for these diseases, we **deem** them to have been caused by employment without further requirement to establish a causal link with employment.

## Unless the contrary is established

Section 7(1) of the SRC Act provides that:

> *'... the employment will be taken to have significantly contributed to the contraction of the disease, unless the contrary is established'.*

The responsibility of establishing the 'contrary', if applicable, rests with Comcare.

Before accepting a claim under section 7(1), you should ensure all relevant evidence is obtained and considered to ensure the 'contrary' is not established.

Examples of evidence that may require further investigation can include but are not limited to:

- genetic and other risk factors, family history, pre-existing, congenital, constitutional, or underlying conditions or any other health problems that may predispose a person to suffering the claimed disease. Medical practitioners should be asked to list and address the significance of any factors unrelated to employment that have been relevant to the development of the condition
- other causes or factors that can be attributed to the existence of the disease (e.g. smoking, lifestyle, personal habits that involve the use of certain chemicals)
- evidence provided by the employer that conflicts with the employee's claimed contentions (e.g. employment history, nature of duties, working conditions, where the work was conducted, level of exposure to causative agent, materials/equipment used, the process/work practices followed, tests conducted, environmental factors etc).

If the contrary is established, then section 7(1) does not apply.

**Note:** For claims with a date of injury on or after 1 October 2017, the deemed diseases report and the deemed diseases supplementary report will assist you in determining what specific evidence/medical questions should be investigated.

## Minimum period of employment

The minimum period of employment specified in the deemed diseases list is based on section 6 of the *Deemed Diseases approach - information to support the update of the Comcare Scheme's current deemed diseases legislative instrument* - August 2017 (supplementary deemed disease report provided by Dr Tim Driscoll).

Most of the 44 items specified in the deemed diseases list have a minimum period of employment. To satisfy the requirements of an item with a minimum employment period:

- the employee must have engaged in one or more periods of employment of a kind specified for that item, and
- the combined period or the sum total of the periods (whether consecutive or not) of such employment, must be no less than the minimum employment period for that item.

Any period of non-scheme employment (employment not covered under the SRC Act) is not counted. The employee need not have worked with that person, thing or agent, or undertaken the activity specified, every working day. However, each disease specified is associated with a particular kind of employment. The minimum employment duration period for that disease is based on the typical work profile of that kind of employment.

## Other avenues of compensation

Where a disease claim does not qualify under section 7(1), you should continue to assess liability under the other liability provisions provided within the SRC Act. For example, in the event that the disease claimed is of a kind that is not prescribed in the deemed diseases list, you should consider section 7(2). If coverage does not exist under section 7(2), you should consider the significant employment contribution test in section 5B of the SRC Act.

## Exclusionary provisions

If the disease meets any of the above tests the exclusionary provisions also need to be considered.

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# Greater incidence of disease – section 7(2) and 7(3)

Section 7(2) of the SRC Act is applied in disease cases where:

> *'the incidence of that disease among persons who have engaged in such employment is significantly greater than the incidence of the disease among persons who have engaged in other employment in the place where the employee is ordinarily employed.'*

**Note**: section 7(3) applies the same factors as section 7(2) but relates to an **aggravation** of a disease.

Section 7(2) of the Act requires three criteria to be met:

1. The disease suffered by the employee became symptomatic after the employee was engaged in employment by the Commonwealth.
2. There is a significantly greater incidence of that disease among employees in that role than among other employees at that location undertaking different roles. And:
3. Comcare is unable to establish that the employee's employment did not significantly contribute to the disease.

Section 7(2) reverses the onus of proof and presumes that employment significantly contributed to the claimed condition unless Comcare can establish the contrary.

**Example scenario:** An epidemiological study is undertaken at a particular agency building. It finds a significantly higher incidence of disease in scientists working in a specific laboratory within an agency building. The incidence of disease for other employees working in the same building is significantly lower.

In such a scenario, the disease will be presumed compensable, unless the contrary can be established.

Criterion 2 (outlined in the scenario above) will likely require specific evidence such as an epidemiology study conducted by an epidemiologist. Epidemiology is the study and analysis of the incidence of disease in different groups of people.

**Comparing communities of employees**: Section 7(2) is not clear on what the comparison actually is in terms of *'... persons who have engaged in other employment in the place where the employee is ordinarily employed'*. Previous cases have taken this to mean a comparison between employees of a particular workplace (undertaking any kind of work) and the general community, and other cases have taken this to mean a comparison of a specific cohort of employees (undertaking the same work) and the general community where they work.

**Important – seek Legal advice**: There have not been many cases where section 7(2) of the SRC Act has been applied. If several claims are received from a group of employees who are employed in the same workplace further advice must be sought, via your Assistant Director, from the Legal group.

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# Deeming date of injury – Section 7(4)

Ailments often have a gradual onset and it can be difficult to identify a clear date of injury when determining liability and calculating entitlements.

Section 7(4) of the SRC Act provides an employee shall be taken to have sustained an injury, being a disease or an aggravation of a disease, on the date when:

- the employee first sought medical treatment for the disease, or aggravation (**Note**: For Noise Induced Hearing Loss (NIHL) claims this may be the date of the first hearing assessment or the date the employee first consulted a doctor. See Hearing loss for more information), or
- the disease resulted in the death of the employee, or
- the disease first resulted in incapacity for work, or
- the disease first resulted in impairment to the employee,

whichever happens first.

**Definition of impairment:** Section 4(1) defines 'impairment' to mean:

> *'the loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function'.*

Medical evidence should be obtained to assist in determining when an employee was first impaired due to their disease. The date an employee first sought medical treatment is usually the first documented evidence available to support deeming the date of injury under section 7(4). However, there may be circumstances where an employee is impaired or incapacitated before they first seek medical treatment.

## Information that can assist with deeming a date of injury (DOI)

While the date an employee first sought medical treatment is usually the first documented evidence available to support deeming the date of injury under section 7(4), there may be circumstances where an employee is impaired or incapacitated before they first seek medical treatment.

Information that can assist with deeming a date of injury (DOI) can include, but is not limited to:

- letters from treating doctors
- medical certificates, medical reports, hearing assessments, clinical notes
- diagnostic imaging reports
- employment records confirming when the employee was employed, duration of employment, duties performed, pre-employment medicals and physical/psychiatric assessments undertaken in respect of their employment
- changes in employment: hours or days worked, change in role or duties, change in employment type (full time to part time), reporting lines
- information about whether the employee is or was employed elsewhere and the nature of these duties or the conditions of employment
- incident reports
- Informal and formal performance assessments and associated documents – is there a change in performance, particularly a downturn in performance, that may indicate impairment?
- leave records – is there a noticeable change in the amount or time of leave being taken?

**Note**: If you have questions concerning a DOI, you should discuss the claim with your Assistant Director.

## Example of deeming date of injury

An example of a circumstance where an employee is incapacitated before they seek medical treatment is presented below.

**Example:** An employee lodges a claim for a psychological condition on 1 October 2020, with evidence indicating they first sought medical treatment for the condition on 1 September 2020. The Claims Manager deems the date of injury based on the date the employee first sought medical treatment.

On further discussion with the employee, the Claims Manager establishes the employee took annual leave for the period from 1 August 2020 to 21 August 2020 following the workplace incident. The employee's treating practitioner confirms the time off work was because of the accepted condition.

In this case, we would deem the date of injury as 1 August 2020, being the date when the accepted condition caused an incapacity for work. This is because the date of incapacity was earlier than the date the employee first sought medical treatment.

## Hearing loss claims

The Federal Court has confirmed that the date of last exposure to noise cannot be used as the date of injury for hearing loss claims. Section 7(4) must be applied to hearing loss claims in the same way as it is for other disease claims (*Comcare v Kemp [2020] FCA 865*).

An example of how this is applied is detailed below:

**Example:** An individual was employed by the Commonwealth as a construction worker. They ceased their employment with the Commonwealth in the mid-1980s. Years later, the ex-employee lodges a claim for Noise Induced Hearing Loss (NIHL) attributed to their employment as a construction worker where they were exposed to high levels of noise.

The claim form is accompanied by an audiogram test conducted on 21 December 2013. Employment records obtained from the employer confirm that the employee was employed from August 1985 to January 1987.

Based on the evidence provided, the date of injury (DOI) would be deemed to be the date the employee first sought medical treatment (i.e. the date the audiogram test was conducted) 21 December 2013.

**Note**: While the DOI for this example is 21 December 2013, the Claims Manager must record in Pracsys that the exposure occurred prior to 1 December 1988. The purpose of this is to allow liability for these claims to be correctly allocated against the Consolidated Revenue Fund rather than Comcare's premiums funds. See Long latency diseases below.

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# Long latency diseases (exposure prior to 1 December 1988)

Long latency disease claims are funded from a Consolidated Revenue Fund (CRF) appropriation, not premiums (see section 90B(ab) of the SRC Act). This fund enables Comcare to pay compensation for claims in respect of conditions where the event or process that led to the illness happened or commenced before 1 December 1988 but the condition did not manifest itself until after that date.

On 7 December 2011 the SRCOLA Act *(Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2011)* provided a number of amendments to the SRC Act. These included arrangements for the funding of compensation for long-latency disease claims. Before commencement of these amendments, Comcare was required to collect premiums to fund liabilities for long-latency disease claims. Premiums were based on the deemed date of injury (DOI) where the DOI was 1 December 1988 or later (this excluded the off-budget agencies who are listed in section 128A(4) of the SRC Act). This resulted in Comcare having to fund liability for recently diagnosed long latency disease claims, even though the 'cause' of these diseases occurred prior to the commencement of the SRC Act.

## Types of conditions

Long latency diseases and conditions include hearing loss, skin cancers and diseases relating to exposure to asbestos, e.g. mesothelioma. In those cases, the date of injury may be deemed to have been after the commencement of the SRC Act, but if the actual exposure occurred prior to that date, the claim can be flagged as an “exposure” claim and it will not affect the entity’s premium. The claim costs will be taken from the CRF.

An example of this type of claim would be where the employee inhaled asbestos fibres during employment before 1 December 1988 and the employee, as a result of this exposure, contracts mesothelioma which manifests in 2020.

When determining liability on a claim, you must consider when the exposure occurred and enter the appropriate date. If the exact date is unknown but it is clear the exposure occurred prior to the SRC Act commencing, it is sufficient to enter 30 November 1988 as the exposure date.

It is possible for some illnesses to be contributed to by multiple periods of employment with different agencies. In these instances, it is recommended that you liaise with Practice Support and Account Management for assistance with identifying the appropriate liable employer.

You can view the exposure flag on a claim in Pracsys using the “View Claim Registration” (VCLM) function. On the “NDS/TP/Journey” tab you will see the fields for exposure claims.

## Recording exposure prior to 1 December 1988

Pracsys allows us to record the instances where exposure occurred prior to 1 December 1988. The purpose of this is to allow liability for these claims to be correctly allocated against the CRF rather than Comcare's premiums funds.

The table below outlines who is responsible for recording information in the NDS/TP/Journey tab in Pracsys for long latency disease claims:

| Stage | Person responsible | Description |
|---|---|---|

| | | |
|---|---|---|
| Claim Registration | Claim Registration Officer from Claims Administration and Income Support (CAIS) | • Ticks the box 'Pre 01-Dec-1988 Exposure' date field. |
| Determination of Initial Liability | Claims Manager | • Amends the date of injury (DOI) field once it has been deemed in the determination.<br>• Enters the exposure date in the 'Pre 01-Dec-1988 Exposure' date field.<br>**Note**: If the date of first exposure cannot be identified but it can be ascertained:<br>• that the employee was employed by the Commonwealth, and<br>• would have suffered exposure prior to 1 December 1988<br>then the date taken to be the date of exposure will be 30 November 1988. |
| Quality Assurance | Assistant Director, Operations | • Conducts Quality Assurance on the initial liability determination and the below in Pracsys:<br>◦ exposure date entered in the 'Pre 01-Dec-1988 Exposure date' field, and<br>◦ deemed DOI. |

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## Firefighters

You may receive a new workers compensation claim from a firefighter claiming for a cancer that has been caused as a result of their employment. Read this section for guidance and refer to the Procedure to assess a firefighter's claim. See also the Scheme guidance Disease provisions relating to firefighters.

It is important that you are familiar with the disease provisions in the SRC Act (see section 7(8) and (9) of the SRC Act) and Part 27 of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (the 2022 Amendment Act).

The SRC Act, along with the 2022 Amendment Act, state that for the firefighter disease provisions to apply, the employee must:

- suffer from a prescribed cancer, and

- have been employed as a firefighter (taken to be where firefighting or related duties made up a "not insubstantial portion of their duties"), and
- have been in cumulative employment for the prescribed qualifying period before the cancer was sustained, and
- have been exposed to the hazards of a fire anytime during the qualifying period, and
- have been employed as a firefighter by the Commonwealth or a Commonwealth authority.

If each of these requirements is satisfied, then the employment is taken to have contributed to a significant degree to the contraction of the cancer, unless the contrary is established.

If an employee does not satisfy the matters set out under these sections, then you must assess the claim under the other liability provisions provided by the SRC Act and consider any applicable exclusionary provisions.

## Date of application

The following are points of guidance concerning the date of application of the disease provisions for firefighters in the SRC Act.

- Cancers are treated as diseases and section 7(4) of the SRC Act is applied to deem the date of injury (DOI).
- The reduction of the qualifying period for oesophageal cancer has retrospective application from 4 July 2011. The amendment relating to 'not insubstantial portion of duties' applies from 07 December 2022.
- Current and retired firefighters whose qualifying period of service occurred or started before the relevant date of application are covered.
- If the DOI is before the relevant date of application, the claim should be assessed against the other SRC Act disease provisions.

## Evidence to request from an employer

You can request an employer to provide a statement addressing:

- that the employee was employed as a firefighter by the Commonwealth or a Commonwealth authority
- the duties undertaken by the employee, where firefighting and related duties made up a not-insubstantial portion of the employee's duties, and
- whether the employee was exposed to the hazards of fires during the qualifying period.

## Prescribed cancers

A firefighter must be diagnosed with one of the prescribed cancers for their employment to be taken to have been the significant cause of the cancer.

Secondary cancers which present at the specified sites will not be covered automatically, even if the cancer becomes present in one of the sites in the prescribed list. A secondary cancer occurs where the cancer has originated in and spread from another part of the body. A secondary cancer, if claimed, may need to be assessed as a separate claim.

Where a firefighter claims an aggravation of cancer/s already suffered, speak with your Assistant Director to clarify if an individual's acceleration or recurrence of a cancer, is covered by the provisions or not.

Other types of cancer may be prescribed by regulations at a later date.

## Qualifying periods

A person must have been employed for the prescribed qualifying period (see table below) for that cancer before they are first diagnosed with the prescribed disease.

Section 7(9) allows firefighters to add up cumulative periods of service to satisfy the qualifying period. Those employed for two or more separate periods that add up to the qualifying period are taken to have been employed for the qualifying period.

## Table of prescribed cancers and the qualifying employment period

The table below sets out the cancers prescribed by the SRC Act and the 2022 Amendment Bill and lists the qualifying periods for each type of cancer listed.

| Item | Disease | Qualifying period |
|---|---|---|
| 1 | Brain cancer | 5 years |
| 2 | Bladder cancer | 15 years |
| 3 | Kidney cancer | 15 years |
| 4 | Non-Hodgkin's lymphoma | 15 years |
| 5 | Leukaemia | 5 years |
| 6 | Breast cancer | 10 years |
| 7 | Testicular cancer | 10 years |
| 8 | Multiple myeloma | 15 years |
| 9 | Primary site prostate cancer | 15 years |
| 10 | Primary site ureter cancer | 15 years |
| 11 | Primary site colorectal | 15 years |
| 12 | Primary site oesophageal cancer | 15 years |
| 13 | A cancer of a kind prescribed for this table | The period prescribed for such a cancer |

The *Safety, Rehabilitation and Compensation Amendment (Prescribed Cancers) Regulations 2022* have expanded the list of prescribed cancers under section 7(8) of the SRC Act 1988 with effect from 17

December 2022.

The eight new prescribed cancers and qualifying periods include:

| Item | Disease | Qualifying period |
|---|---|---|
| 1 | Malignant mesothelioma | 15 years |
| 2 | Primary site lung cancer | 15 years |
| 3 | Primary site skin cancer | 15 years |
| 4 | Primary site cervical cancer | 10 years |
| 5 | Primary site ovarian cancer | 10 years |
| 6 | Primary site penile cancer | 15 years |
| 7 | Primary site pancreatic cancer | 10 years |
| 8 | Primary site thyroid cancer | 10 years |

You should also familiarise yourself with diseases covered under the *SRC Act (Specified Diseases and Employment) Instrument 2017*.

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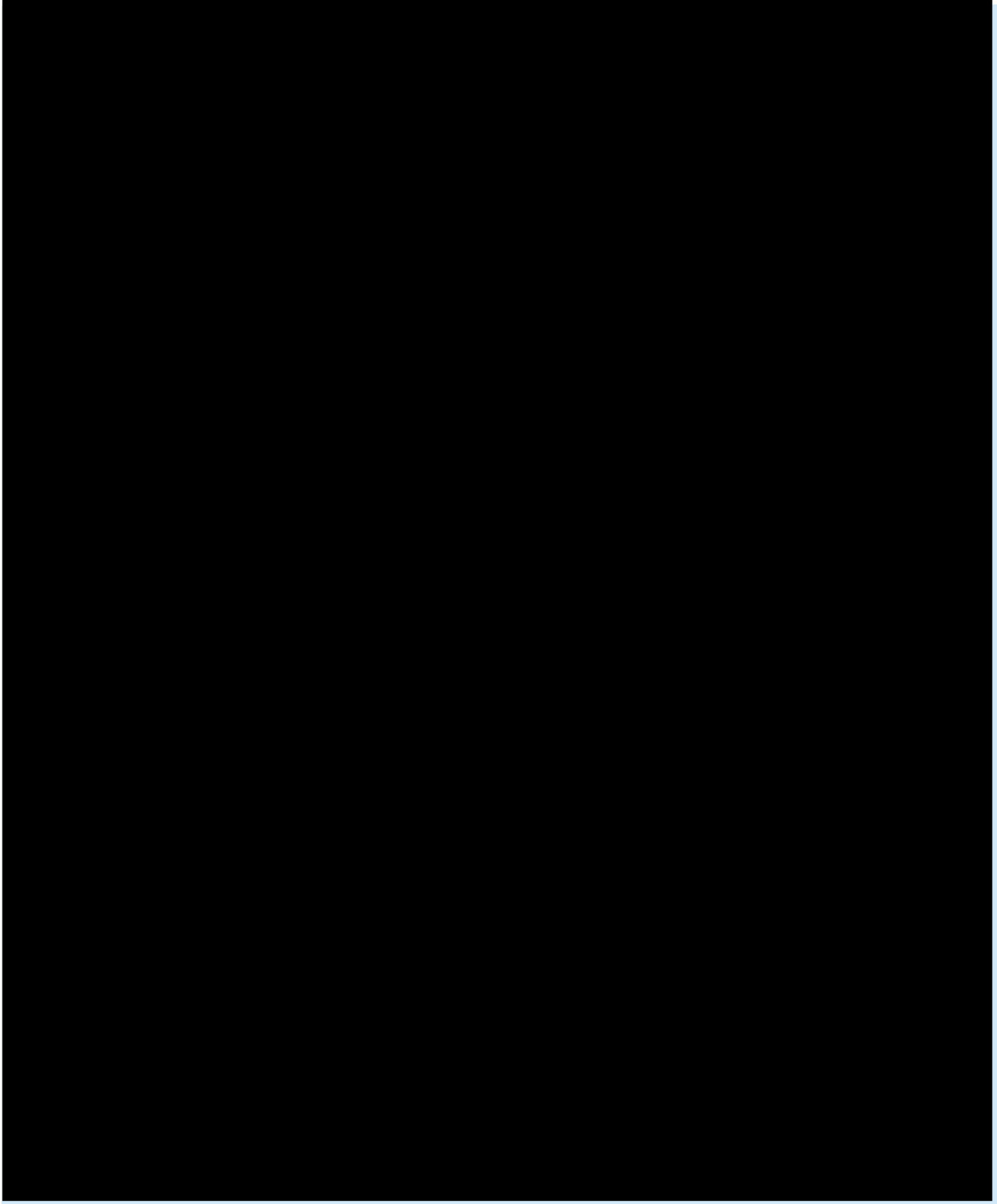

## Presumptive provisions for first responders

You may receive a new workers compensation claim from a first responder claiming for post-traumatic stress disorder (PTSD) which has been caused as a result of their employment.

It is important that you are familiar with the presumptive liability provisions for diseases in the SRC Act (see section 7(11), (13) and (14) of the SRC Act) and Schedule 3 (pages 305-306) of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (the 2023 Amendment Act). See also the Scheme guidance Post Traumatic Stress Disorder suffered by certain employees.

These provisions provide a simplified and streamlined access to workers compensation for first responders who suffer or are suffering from PTSD.

The changes reverse the onus of proof from first responders to employers. This allows affected employees easier and more timely access to necessary assistance and compensation.

Reversing the burden of proof from first responders to employers does not introduce new entitlements to compensation payments made under the SRC Act. Instead, it provides timely access to compensation, while still providing employers with the opportunity for evidence-based rebuttal (establishing the contrary). Exclusionary provisions still apply.

**Note:** If you require further guidance or have any questions in relation to the presumptive provisions for first responders, please discuss your concerns with one of the Technical Capability Officers.

## Threshold tests

Section 7(11) introduces presumptive compensation for first responders who suffer or are suffering from PTSD, without having to prove that their PTSD is work-related.

For the presumption to apply, the following requirements must be met:

- the employee contracted PTSD on or after 15 December 2023 (this is the date the presumptive liability for PTSD came into effect), and
- the employee has suffered or is suffering from PTSD, and
- before the symptoms of PTSD became apparent, the employee was employed as a first responder.

If each of these requirements is satisfied, then the employee's employment as a first responder is taken to have contributed to a significant degree to the contraction of the PTSD, unless the contrary is established. These requirements are outlined in the sections below.

Presumptive liability can come into effect at any time during a liability assessment for a claim.

> **Example:** A claim for different psychological conditions or a claim for multiple conditions including PTSD is submitted by an employee.
>
> During the assessment, medical evidence is provided that supports a PTSD diagnosis in line with the Diagnostic and Statistical Manual of Mental Disorders – fifth edition text revision (DSM-5-TR).
>
> If the other criteria for presumptive liability are met, presumptive liability for the PTSD condition applies and can be accepted unless Comcare can establish the contrary. The Claims Manager can then continue to assess liability for any other psychological conditions related to the claim in accordance with the other liability provisions under the SRC Act.

## Suffered or suffering from post-traumatic stress disorder

Section 7(11) provides that a presumptive claim for PTSD:

- **must** have a diagnosis from a legally qualified medical practitioner (LQMP) (e.g. GP or psychiatrist) or a psychologist
- the diagnosis **must** be assessed in accordance with the Diagnostic and Statistical Manual of Mental Disorders – fifth edition text revision (DSM-5-TR).

You should review the diagnosis made by the LQMP or psychologist to decide whether this requirement has been met (i.e. that the diagnosis was made in accordance with the DSM-5-TR criteria for PTSD). If uncertain, you should seek further information from the LQMP or psychologist who provided the diagnosis, and ask that they apply or review the criteria of the DSM-5-TR to confirm or provide an alternative diagnosis.

If these considerations are not met, then you must assess the claim under the other liability provisions provided by the SRC Act (see section 5B) and consider any applicable exclusionary provisions.

To support employees, you should remind them that they need to advise their LQMP or psychologist that they must clearly state in their evidence that the DSM-5-TR was used to diagnose the PTSD.

## Employed as a first responder

For the presumption legislation to apply, the employee must have been employed as a first responder before the PTSD was contracted.

Section 7(13) defines first responders as:

### 1: Australian Federal Police (AFP) employees, within the meaning of the *Australian Federal Police Act 1979*.

This includes the following AFP employees:

- the Commissioner of the Australian Federal Police
- the Deputy Commissioner of the Australian Federal Police
- persons engaged by the Commissioner of the Australian Federal Police as employees.

### 2: Australian Border Force employees

This includes the following ABF employees:

- the Australian Border Force Commissioner
- an Australian Public Service (APS) employee in the Australian Border Force.

### 3: Commonwealth and ACT Government employees, employed as:

- firefighters
- ambulance officers or paramedics
- emergency services communications operators.

### 4: Members of an emergency service, within the meaning of the *Emergencies Act 2004* (ACT).

This includes ACT Government employees and volunteers:

- involved in response operations for storms and floods
- involved in assistance operations relating to emergencies and searches.

**5: Responders as declared by the Minister by legislative instrument including:**

- any member of a class of employees classified as a 'responder'
- classes of employees to whom the presumptive legislation applies.

You will need to rely on information from the employer to determine whether the employee was or is employed as a first responder.

> **Example:** The employee is employed as a first responder and according to medical evidence contracted PTSD on 6 November 2023, which is prior to the commencement of the presumptive provisions.
>
> In this instance, the claim needs to be assessed under the normal provisions of the SRC Act including any applicable exclusionary provisions.

## Establishing the contrary (rebuttal)

The presumptive provisions mean that the first responder's employment is taken to have contributed, to a significant degree, to the PTSD condition. This is presumed, **unless the contrary is established**.

The standard of proof which applies in determining whether the contrary has been established is the balance of probabilities (more probable than not).

To establish the contrary, you need to have the relevant evidence or information available. This is usually provided by the employer or treating medical practitioner. The information or evidence needs to contradict or nullify the requirements of the presumptive provisions.

> **Example:** A claim is made by a first responder suffering from PTSD. The employer confirms that the employee was employed as a first responder before the onset of the PTSD.
>
> The employer advises that they are aware the employee was exposed to a traumatic event in their private life and that the event may be the cause of the PTSD.
>
> Further medical evidence is sought from the treating practitioner which establishes that the likely cause of the PTSD is the non-work-related traumatic event, and that the employment as a first responder had no significant contribution to the PTSD. Therefore, the contrary has been established.
>
> The employee's employment as a first responder will not be taken to have contributed, to a significant degree, to the contraction of the PTSD.

## Other avenues of compensation

If the presumptive provisions do not apply, the claim will need to be assessed under the normal provisions of the SRC Act. Refer to section 5B of the SRC Act.

## Reconsiderations

Where a claim for PTSD has been accepted under the presumptive provisions, employers are still entitled to request a reconsideration to establish the contrary (rebuttal) of the claim.

## Exclusionary provisions

Even if the presumptive provisions apply to the employee's claim for PTSD, you will still need to take the considerations under the exclusionary provisions of the SRC Act into account when determining the claim.

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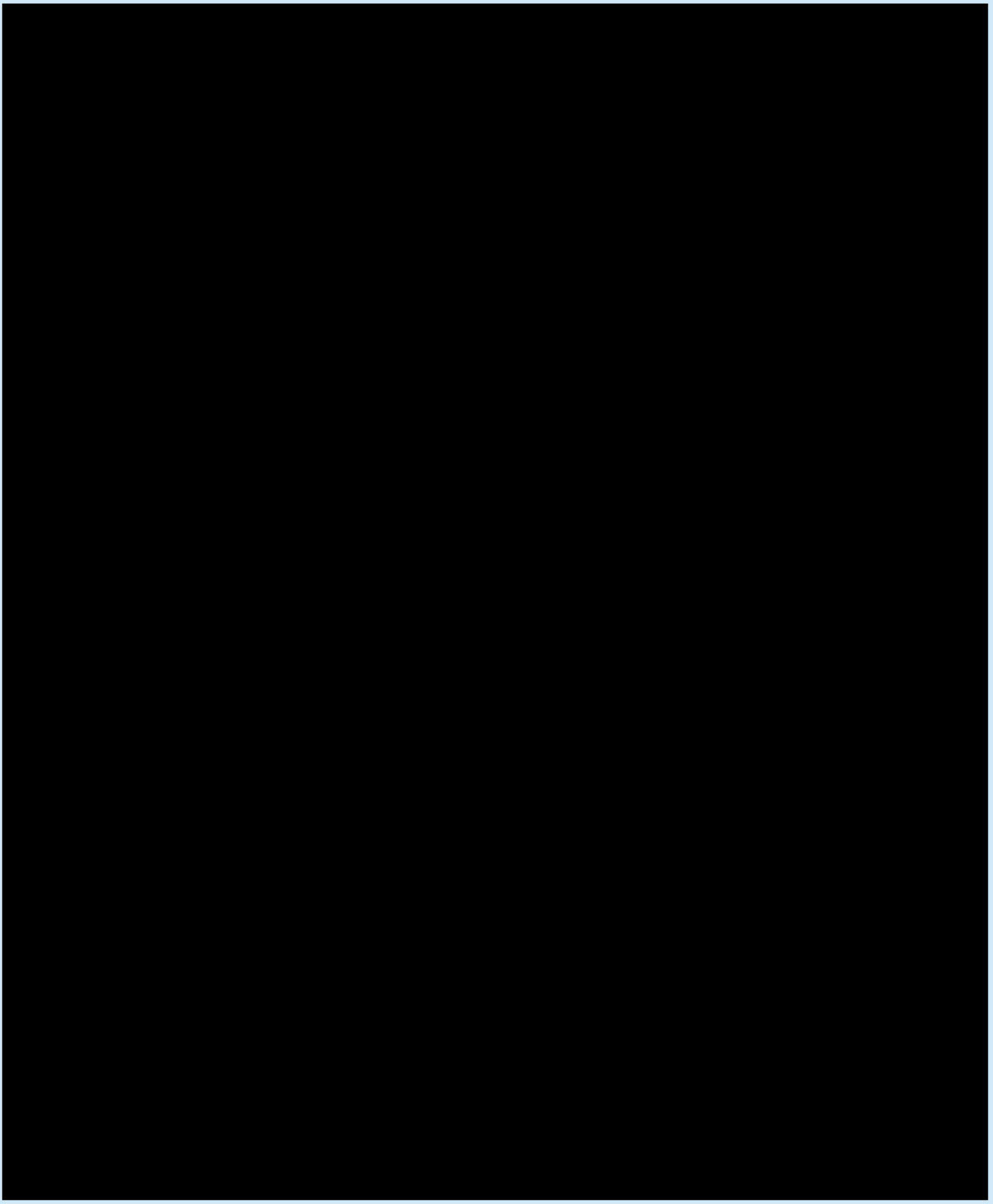

# Exclusionary Provisions

## Introduction to exclusionary provisions

The SRC Act provides that in some situations employees are excluded from receiving compensation. **Compensation is not payable** to an employee if the injury is:

- intentionally self-inflicted
- caused by serious and wilful misconduct by the employee (unless the injury results in death or serious and permanent impairment)
- caused as a result of the employee being under the influence of alcohol or a drug (other than a drug prescribed to the employee by a legally qualified medical practitioner or dentist) unless the injury results in death or serious and permanent impairment
- as a result of reasonable administrative action (RAA) undertaken in a reasonable manner against the employee
- (in the case of injuries other than a disease) sustained because the employee voluntarily and unreasonably submitting to an abnormal risk of injury.

Compensation is also not payable if an employee makes a false representation, connected with their employment, that they did not suffer from a disease.

**Important**: The exclusionary provisions apply to primary and secondary conditions.

All new claim assessments and determinations must rely on evidence, including documents and information in the claim file.

Consult the pages in Gathering claim information for help with information gathering to support your assessment and determination.

### Relevant sections of the SRC Act

The relevant sections of the SRC Act for exclusionary provisions are:

- section 4(13) – under the influence of alcohol or drugs
- section 5A – no liability for a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment
- section 6(3) – voluntarily and unreasonably submitted to an abnormal risk of injury
- section 7(7) – wilful and false representation that the employee did not suffer, or had not previously suffered, from that disease.
- section 14(2) – self-inflicted
- section 14(3) – serious and wilful misconduct.

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## Intentionally self-inflicted

Under section 14(2), an employee cannot be paid compensation in respect of an injury that they deliberately inflicted on themselves.

You must consider whether the effects of a psychological injury meant that an employee did not realise their actions would result in self-harm.

An 'intentional' act is one of a person's own volition. Carelessness or accident are also not sufficient to establish an intention for self-harm.

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## Serious and wilful misconduct

Under section 14(3) of the SRC Act, compensation is not payable for in an injury that is caused by an employee's **serious and wilful** misconduct but is not intentionally self-inflicted.

'Serious' means the misconduct in question, not the consequences. 'Wilful' means that the misconduct was deliberate, not accidental. If the action was thoughtless or negligent, it is not 'wilful' for the purpose of the SRC Act.

For the exclusion to apply, the misconduct must have been the cause of an injury. That is, the injury would not have happened, if not for the misconduct.

If serious and wilful misconduct results in death, or serious and permanent impairment, this exclusion will not apply.

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## Under the influence of alcohol or a drug

Under section 4(13) of the SRC Act, an employee under the influence of alcohol or a non-prescribed drug is taken to be guilty of serious and wilful misconduct.

There must be evidence that an employee was under the influence of a substance.

In the case of serious or wilful misconduct, you need to consider whether the injury resulted in serious and permanent impairment. Then you can decide if payment of compensation is excluded under section 14(3).

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## Employee voluntarily and unreasonably submitting to an abnormal risk of injury

Under section 6(3) compensation is not payable if an injury (other than a disease) is sustained because the employee voluntarily and unreasonably submitted to an abnormal risk of injury. To correctly apply this exclusion, it is necessary that you consider, whether:

- the activity which led to the employee's injury was dangerous in any way
- the employee voluntarily undertook the activity despite knowledge of the dangers involved, and
- it was unreasonable for the employee to undertake the activity.

**Section 6(3) is only relevant if the employment relationship is identified under section 6(1) rather than section 5A**: The Federal Court in the decision *O'Loughlin v Linfox Australia Pty Ltd [2017] FCA 1394* held that section 6(3) can only be applied if the relationship of the injury to employment is found under section 6(1). That is, if the relationship to employment is already identified under section 5A, this exclusion cannot apply as 6(1) does not need to be considered.

For further guidance refer to the Injuries under section 6(1) page.

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## Wilful and false representation

Section 7(7) of the SRC Act is an exclusionary provision. A disease or an aggravation of a disease is not taken to be an injury for the purposes of the Act under the following conditions:

The employee has at any time, and for purposes connected with their employment by the Commonwealth made a wilful and false representation that they did not suffer or had not previously suffered from that disease.

To apply this exclusion, you must be satisfied:

- an employee had a pre-existing disease
- an employee made both a 'wilful' and 'false' representation that they did not suffer, or had not previously suffered, from that disease, and
- the representation was for purposes connected with their employment by the Commonwealth.

To be wilful there must be an intention to mislead. A false statement that arises from carelessness or mistake is not sufficient for the purpose of applying this exclusion.

For further guidance on liability for disease, refer to the Injury and disease under the SRC Act and Considerations relevant to disease claims pages.

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## Definition of injury before 13 April 2007

The *Safety, Rehabilitation, Compensation and Other Legislation Amendment Act* (SRCOLA 2007) amendments came into effect on 13 April 2007. Before then, the definition of injury in section 4 of the SRC Act excluded a disease, injury or aggravation suffered by an employee as a result of:

- reasonable disciplinary action taken against the employee, or
- failure by the employee to obtain a promotion, transfer or benefit in connection with their employment.

This definition has since been amended, but still applies to claims with a date of injury prior to 13 April 2007.

On 13 April 2007, section 5A (Definition of injury) was inserted, amending the definition of injury. From 13 April 2007, **injury does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.**

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## Reasonable administrative action taken in a reasonable manner

Under section 5A(1) of the SRC Act, compensation is not payable if the injury is as a result of 'Reasonable Administrative Action' (RAA) undertaken in a reasonable manner.

Administrative actions are outlined under section 5A(2) and includes, but is not limited to:

(a) a reasonable appraisal of the employee's performance

(b) a reasonable counselling action (whether formal or informal) taken in respect of the employee's employment

(c) a reasonable suspension action in respect of the employee's employment

(d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee's employment

(e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c) or (d)

(f) 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.

The intent of the exclusionary provision is to exclude claims arising from legitimate management processes, when undertaken in a reasonable manner.

The exclusion only applies where an injury is sustained as a result of a RAA, noting the RAA does not need to the be sole cause of the injury.

## What is administrative action?

Administrative action must be directed specifically to the employee as an individual in respect of their employment.

Administrative action does not include 'operational' actions directed at the way in which an employee is required to carry out their duties.

'Operational' actions include:

- ordinary work routine and changes to routine
- ordinary feedback in the day-to-day business of management of an employee and their output (not performance counselling)
- regular catch-up or team meetings with a supervisor or team that lack individual discussion of performance improvement (not regular performance meetings), and
- directions to perform work.

In determining what is administrative action you will need to consider the specific employment factors that contributed to the development of the condition and assess whether any of those factors are administrative actions.

Examples of administrative actions include:

- an employer acting on the recommendation of a fitness for duty assessment undertaken in respect of an employee, and
- transfer of an employee to a different position under a broader agency policy that it is specifically directed to the employee.

## When is administrative action 'reasonable'?

Determining whether administrative action is reasonable requires an objective assessment of the action. You need to consider the context of the circumstances and knowledge of those involved at the time. This includes:

- circumstances that led to and created the need for the administrative action to be taken
- circumstances while the administrative action was being taken including the emotional state and psychological health of the employee involved (*Georges and Telstra Corporation Limited [2009] AATA 731 [23]*; *Yu and Comcare [2010] AATA 960*, and
- consequences that flowed from the administrative action (*Georges and Telstra Corporation)*.

The test is whether the administrative action was **reasonable**, not whether it could have been undertaken in a manner that was '**more reasonable**' or '**more acceptable**' (*Bropho v HREOC (2004) 135 FCR 105 [79]*).

Some general points:

- Administrative actions do not need to be perfect or ideal to be considered reasonable.
- A course of action may still be 'reasonable action' even if particular steps are not (*Department of Education & Training v Sinclair [2005] NSWCA 465*).
- Any 'unreasonableness' must arise from the actual administrative action in question, rather than the employee's perception of it (*Martinez and Comcare [2013] AATA 949*).
- Consideration may be given as to whether the administrative action involved a significant departure from established policies or procedures. If so, consider whether the departure was reasonable in the circumstances.

## What is a reasonable manner?

Whether the administrative action was taken in a reasonable manner includes consideration of:

- the action
- the facts and circumstances initiating the action
- the way in which the action impacts the employee
- the circumstances in which the action was implemented
- whether established policies and procedures were followed
- whether any investigations were carried out in a timely manner, and
- any other relevant matters.

The impact on the employee cannot by itself establish whether the administrative action was carried out in a reasonable manner. Some degree of humiliation may often be the consequence of a manager exercising their legitimate authority at work (*Comcare v Martinez (no.2) [2013] FCA 439*).

## Was the injury 'as a result of' the reasonable administrative action (RAA)?

The RAA exclusion can only be applied where the employee's injury was sustained as a result of the RAA.

The High Court decision in *Comcare v Martin [2016] HCA 43* clarified the circumstances in which the RAA exclusion can apply. It also sets out the necessary causal connection considerations. The subsequent Full Federal Court decision in *Lim v Comcare [2017] FCAFC 64* provided further clarification about the application of the RAA provisions in the SRC Act.

To assess whether the injury was as a result of RAA, you needs to consider whether the action made the difference between the employee sustaining or not sustaining the injury. Refer to the procedure to assess if the RAA applies for further guidance).

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# Specific conditions and circumstances

## Introduction

This page provides information on several specific circumstances and conditions which need additional guidance when assessing liability for a compensation claim.

The circumstances are:

- New conditions which result from compensable medical treatment for an existing compensable condition – where medical treatment has caused a new condition.
- Liability for employees who are engaged locally in overseas locations.
- Hearing loss claims.
- Transitional provisions, for claims with a date of injury prior to the current SRC Act coming into effect.
- Claims arising out of the claim administration or rehabilitation process.
- Loss of or damage to property belonging to an employee – including items like glasses / spectacles, hearing aids or wheelchairs.

All new claim assessments and determinations must rely on evidence, including documents and information in the claim file. Consult the pages in Gathering claim information, in particular the pages on obtaining medical evidence, for help with information gathering to support your assessment and determination.

### Relevant sections of the SRC Act

The sections of the SRC Act which are relevant to this page include:

- section 4(3) – (injury as a result of medical treatment of an injury)
- section 5A – definition of injury
- section 7(4) – (deeming the date of injury for a disease)
- section 14 – compensation for injuries
- section 15 – compensation for loss or damage to property used by employee
- section 117 – compensation payable to locally engaged overseas employees
- section 123 and 124 – transitional provisions
- sections 131 – 137 – special transitional provisions

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## Conditions resulting from compensable medical treatment

As the Claims Manager, an employee may notify you that they wish to claim compensation for a new condition that has occurred as a result of medical treatment obtained for an existing compensable condition.

Section 4(3) of the SRC Act outlines this circumstance. If medical treatment is obtained for a compensable condition, and the treatment results in another condition, this condition is deemed to be a new injury. The following conditions apply:

1. Compensation had to be payable in respect of the condition for which the medical treatment was obtained.

and

2. It was reasonable for the employee to have obtained that medical treatment in the circumstances.

As there is a new injury and causative factor, the condition is dealt with as a new compensation claim.

## Examples of conditions resulting from compensable medical treatment

The following are some examples:

**Example 1:**

**New injury as a result of medication for compensable condition**

An employee has an accepted claim for back sprain. Compensation is payable for prescribed anti-inflammatory medication. As a result of this medication, the employee develops a reflux condition known as GORD. GORD is deemed to be a new injury and as the condition is consequential to the accepted medications, the Claims Manager does not need to re-test the employment relationship.

**Example 2:**

**New injury as a result of surgery for compensable condition**

An employee has an accepted claim for a broken ankle for which they undergo approved surgery. As a result of the surgery, the employee develops Deep Vein Thrombosis (DVT). The DVT is considered to be a new injury.

**Example 3:**

**New injury as a result of approved exercise program for compensable condition**

An employee has an accepted claim for medial meniscus tear in their right knee. They participate in a post-operative exercise program to rebuild the strength in their knee and to increase their range of movement. While performing an exercise, the employee develops a hamstring strain. The hamstring strain is considered to be a new injury.

## Third party proceedings for a new injury resulting from treatment for compensable condition

Third party damages proceedings may be instituted against another person or entity or their representative (such as an insurance company). This would be where it is considered the compensable condition has been caused, or contributed to, by normal duty of care processes not being fulfilled.

It is therefore important to consider an injury resulting from treatment, such as surgery, as a new claim so costs can be attributed accurately, in the case there is a third party proceeding.

## Capturing potential third party proceedings

To capture potential third party proceedings, the Claims Administration and Income Support (CAIS) Officer should have indicated '*Yes*' this is a third-party claim at Question 29 in the NDS/TP/Journey tab of the Pracsys registration function. This is necessary even if the employee has not indicated that someone else was responsible for their injury. As Claims Manager, you need to check that this has been selected where appropriate.

In addition, when you (the Claims Manager) process the claim through iClaim, you will also need to indicate '*Yes*' when asked is there a third party/common law indicator present.

**Note**: You may have questions or be unsure whether a claim has the potential to give rise to common law proceedings and a third-party recovery. If so, you should discuss further with the Specialised Claims Team who manage third party recoveries.

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# Locally engaged overseas employees

Commonwealth agencies may engage persons outside Australia for employment outside Australia and to perform the duties of their employment outside Australia. They may be Australian or foreign nationals. The foreign country where they are employed may or may not have a workers compensation scheme or schemes.

These employees are known as Locally Engaged Overseas Employees (LEOEs). They should be advised of their workers compensation coverage by their employer.

Compensation for LEOEs may be undertaken through a locally available scheme in force in the foreign country where they are employed or where no such scheme exists, under the SRC Act.

**Example:** An employee living in Timor Leste and engaged by the Department of Foreign Affairs and Trade on a non-ongoing contract of employment with the Australian Embassy is a locally engaged overseas employee for the purposes of section 117 of the SRC Act. Compensation for LEOEs may be provided through a locally available scheme in force in the foreign country where they are employed. Where no such scheme exists, compensation will be provided under the SRC Act. The claim will sit against the hiring agency. Any Claims Manager may be responsible for such claims.

## Compensation payable to locally engaged employees

Section 117(1) of the SRC Act applies to a person who:

- is an employee within the definition provided by section 5 of the SRC Act
- is engaged outside Australia for employment outside Australia, and
- performs the duties of their employment outside Australia.

**Where section 117 does not apply**

Section 117 does not apply when an employee who was engaged outside Australia to work outside Australia performs the duties of their employment within Australia. If the person is working within Australia, and is an employee as defined under section 5 of the SRC Act, workers compensation coverage will be determined under the usual provisions of the SRC Act.

Section 117 also does not apply to:

- employees hired in Australia who later travel or reside overseas in connection with their employment
- employees who, while overseas on leave, are recalled to duty to perform specific tasks overseas.

Such employees are covered by the general provisions of the SRC Act.

## Where there is a local scheme in place that covers locally engaged overseas employees

Section 117(2) of the SRC Act specifies that where a LEOE is covered for compensation under a scheme of that country, no compensation is payable to that employee under the SRC Act.

Section 117(2) of the SRC Act refers to whether an employer makes contributions to the scheme in force in a foreign country. If an employer, for whatever reason, has chosen not to contribute to the overseas scheme, the LEOE will not be covered under the benefit provisions of the SRC Act.

**Note:** Comcare has no authority to reimburse an employer for any contributions paid to or liability payments made to a local compensation scheme.

## Information to assist in the consideration of a scheme

The definition of a scheme in a particular country will vary from country to country. You will need to consider schemes in other countries on a case-by-case basis based on information provided by the employer. See the section What is a scheme? for more information further down this page.

Before engaging an LEOE, the employer undertaking the recruitment should confirm the local employment-related laws, requirements and worker benefits and entitlements. Advice could be obtained from a local practicing lawyer who, unlike an Australian lawyer, is qualified to provide expert advice on local law and practice.

When an LEOE is injured, the employer should be able to provide you with details of:

- the employee
- the injury and circumstances in which it was suffered
- any scheme(s) for provision of benefits to injured workers that applies to the employee, other LEOEs, or employees of the foreign government. This information may be obtained from a local lawyer or the foreign government. If so, a copy of that advice or the name and contact details of the provider should be provided where possible.

Where this information is not provided, you should request this information under section 71 of the SRC Act.

## Where a particular employee is not covered by the local scheme, but other classes of employees working for the same employer (the Commonwealth

## of Australia) are covered by the scheme

Section 117(3) of the SRC Act relates to employees who are not covered by the local scheme, but where other classes of employees working for the same employer are covered by the scheme. These LEOEs will be entitled to the compensation benefits that would be payable under the compensation scheme in the foreign country as if it applied to him or her.

Comcare must determine and pay those benefits in accordance with that compensation scheme. The LEOE is not entitled to any benefits under any other provision of the SRC Act.

> **Example:** An employee who is a gardener at the Australian embassy in Samoa is injured. The local scheme does not provide coverage for gardeners but does provide coverage for kitchen workers. Comcare determines the claim and pays benefits as if the injured employee were a kitchen worker in the embassy.

## Where employees of the Commonwealth of Australia are not covered at all by any local scheme, but there is a scheme in force for employees of the government of that country

Section 117(4) of the SRC Act relates to the situation where:

- LEOEs are not covered at all by any local scheme
- but there is a scheme in force for employees of the government of that country.

In this case, benefits will be determined by Comcare in accordance with the provisions of the scheme for government employees of that country. The LEOE is not entitled to any benefits under any other provision of the SRC Act.

## Employees working in countries where there is no local scheme

In most cases, there will be a local compensation scheme which applies to a LEOE. Sections 117(2), (3) and (4) of the SRC Act provide for when a local compensation scheme applies or is taken to apply.

Section 117(5) of the SRC Act states that no compensation is payable under the SRC Act to a LEOE where a local compensation scheme applies or is taken to apply to the employment.

**No local scheme**

If there is no local scheme or ability to deem benefits under a government employees' scheme in that country, then the usual provisions of the SRC Act will apply for compensation entitlements. This is a rare situation.

## What is a scheme?

Section 117(6) of the SRC Act defines a compensation scheme as a scheme, whether constituted by law or not, for the provision of compensation benefits.

A scheme in force in the country where a LEOE is employed may be a national, state or private scheme and may for example:

- take the form of an insurance arrangement or a social welfare disability fund
- have exceptions or inclusions in respect of employees of other governments, but may also allow voluntary participation
- have age-based exceptions or exclusions which either operate as a total exclusion or exclude some benefits only.

## Does the scheme in the country where a LEOE is employed need to be comparable to the Comcare scheme?

Section 117(2) of the SRC Act does not require the relevant compensation scheme in the country where the LEOE is employed to be comparable to the Comcare scheme. For example, there is no requirement that it be a 'no-fault' scheme or that it provide comparable benefits to the Comcare scheme.

## What are benefits?

Section 117(6)(c) states that a reference to a benefit is a reference to compensation which is paid on the event of a person's death or incapacity 'in circumstances connected with their employment'.

If benefits are payable when a LEOE is injured or killed at work, the applicable scheme need not be one limited to workers compensation. For example, New Zealand's compensation scheme compensates people who suffer injuries at work, even though the scheme is not exclusively connected to employment.

**Note:** If a scheme exists and either:

- covers the employment of the LEOE or
- covers a class of similar LEOEs or
- at a minimum, covers government employees,

then the entitlements of the LEOE when carrying out their employment overseas are assessed under the foreign scheme. If it is found that an LEOE has no entitlement under the foreign scheme, then they cannot turn to the SRC Act as an alternative. This is in accordance with sections 117(2), (3), (4) and (5).

## How are benefits determined?

Assuming there is a compensation scheme in the country, any incapacity benefits will be determined by the foreign country's compensation scheme administrators. They will be determined in accordance with the provisions of the compensation scheme of the foreign country. The amount and basis of these payments would be dependent upon the provisions of the foreign compensation scheme. For example, the overseas scheme may have statutory rates or limits. Any such amounts would be likely to be paid on the basis of the overseas salary.

Medical expenses would also be paid in accordance with the provisions of the foreign country's compensation scheme. This would be likely to vary from place to place. Schemes could range from having no provision for medical expenses, right through to schemes having medical expense arrangements similar to the SRC Act.

**Note:** If a LEOE claims for an injury or a specific benefit which would normally be covered under the SRC Act, but is not payable under the local scheme, then compensation cannot be paid.

# Hearing loss claims

Hearing loss relates to a reduced level of hearing. It can vary in degrees of severity, occur in all age groups and be reversible, temporary or permanent. Hearing loss can also occur suddenly or gradually, depending on the cause.

## How is hearing loss assessed?

Hearing loss is assessed and measured using a variety of tests. The test results are plotted on a graph called an audiogram, which shows how loud sounds need to be before a person can hear them.

Hearing loss is measured in decibels (dB) and pitch in hertz (HZ). Decibels measure intensity and hertz measures frequency. The results of a hearing test indicate the degree and type of hearing loss.

Prior to any assessments, you may consider requesting the employee to complete the Hearing loss questionnaire form to obtain details on their employment, contribution, specific incidents that resulted in employee's hearing loss, etc.

## Who assesses hearing loss?

Audiologists have expertise in all non-medical areas of hearing services including carrying out hearing loss assessments and rehabilitation of hearing impairments (which includes hearing aid prescription, fitting and management).

Audiologists are not legally qualified medical practitioners (LQMPs) for the purposes of the SRC Act.

An ear, nose and throat (ENT) specialist (or otolaryngologist) is a doctor who specialises in diagnosing and treating ear, nose and throat conditions. An ENT is an LQMP for the purposes of the SRC Act.

## Is hearing loss an injury or disease under the SRC Act?

Hearing loss claims may be treated as an injury or disease for the purposes of the SRC Act depending on the cause of the hearing loss, discussed below.

### Acoustic trauma - assessed under the injury provisions of the SRC Act

Immediate permanent hearing loss can occur if an employee is exposed to very intense or explosive sounds. This type of damage is known as acoustic trauma.

Hearing loss resulting from acoustic trauma is most often an injury (other than a disease) for the purposes of the SRC Act.

### Noise induced hearing loss - assessed under the disease provisions of the SRC Act

Noise induced hearing loss occurs when hair cells in the cochlea of the inner ear are damaged due to long term exposure to excessive noise.

Disease provisions are applied to hearing loss claims that develop gradually and over time. Noise induced hearing loss is treated as a disease. Section 7(4) of the SRC Act applied to determine the date of injury. For more information on determining date of injury for hearing loss, see Hearing loss claims.

## Hearing loss as permanent impairment

If a claim for hearing loss is accepted and the hearing loss has resulted in permanent impairment, employees may claim a lump sum. See Assessing hearing loss claims for permanent impairment. However, this cannot occur until an initial liability determination has been made.

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# Transitional Provisions

## Transitional provisions apply to which claims?

Transitional provisions apply to those claims with a date of injury prior to the commencement of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) on 1 December 1988.

## Which Acts need to be considered in relation to transitional provisions?

Section 123A of the SRC Act provides direction on claims with older dates of injury. Where an injury is suffered prior to 1 December 1988, the decision-maker must determine liability by reference to whichever of the following repealed Acts were in force on the date of injury.

- *Commonwealth Workmen's Compensation Act 1912* (the 1912 Act).
- *Commonwealth Employees' Compensation Act 1930* (the 1930 Act).
- *Compensation (Commonwealth Government Employees') Act 1971* (the 1971 Act).

The SRC Act also details how claims with a date of injury prior to 1 December 1988 should be managed in respect to transitional provisions. Please see *Part X - Transitional provisions* - SRC Act 1988.

## What are the exceptions under section 124?

The transitional provision provide that, if the injury was compensable under the previous version of the SRC Act (e.g. the employee has a compensable injury as defined under the 1971 Act), then entitlements are payable as per the SRC Act provisions after 1 December 1988. This is the case **except** where section 124 expressly states otherwise. Some of those expressly stated provisions include the following:

- Section 124(3) provides that permanent impairment and death benefits are not payable under the SRC Act if:
  - the person has already received compensation of a lump sum in respect of that impairment or death under a previous Act, or
  - if they were not entitled to receive a lump sum payment for impairment or death under the previous Act.
- Section 124(4) provides that where impairment became permanent or death occurred prior to 1 December 1988, the amount payable is the amount that was payable under the previous Act.
- Section 124(5) provides that an employee is not entitled to compensation under section 29 (compensation for household services and attendant care) prior to the commencement date of the SRC Act (1 December 1988). However they can apply for compensation under section 29 of the SRC Act after 1 December 1988, and the considerations under that section then apply.
- Section 124 is silent regarding claims made under section 39 (alterations, modifications, aids and appliances). Where an employee is entitled to compensation generally (irrespective of the date of injury and applicable legislation), claims under section 39 may be made, and must be determined in accordance with the 1988 legislative provisions.

## Where can I find further information in relation to transitional provisions?

**Please see:**

- section 124 for further information on specific transitional provisions
- sections 131 - 137 of the SRC Act for further information on the transitional provisions relating to incapacity payments.

If you have any questions in relation to transitional provisions, please discuss these with your Assistant Director.

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# Claims arising out of the claim administration or rehabilitation process

The claim administration process includes actions undertaken by Comcare to assist with managing and determining claims for compensation. These actions can include, but are not limited to:

- investigating conflicting evidence
- requesting information from employees or employers
- a claim being re-allocated to another Claims Manager
- investigating newly reported conditions
- asking treating medical practitioners to provide medical reports or copies of their clinical notes relevant to the claim
- asking employees to complete relevant forms
- arranging for an employee to attend a medical examination under section 57 of the SRC Act
- undertaking reviews to ensure an employee is receiving correct entitlements.

The rehabilitation process includes actions undertaken by a Rehabilitation Authority. These may include arranging rehabilitation assessments and rehabilitation programs for injured employees.

New injuries may arise, or additional claims made for increased benefits on an existing claim, as a result of the claim administration or rehabilitation process. If this occurs, you need to assess if there is:

- a new injury (or aggravation) that has been caused by the claim administration or rehabilitation process, or
- if there is no new injury (or aggravation), then you need to consider the claim for benefits in the usual manner under the appropriate section of the SRC Act.

## New injury/disease (or aggravation) arising out of the claim administration or rehabilitation process

Liability for a new condition or aggravation of an existing condition must be determined under section 14(1) of the SRC Act before any specific benefits, such as medical treatment or incapacity, can be considered in respect of that condition.

It is unlikely that actions undertaken by Comcare in managing a claim for compensation will be considered to be ‘employment’. It is therefore likely that liability for a disease/aggravation of a disease that arose out of the claim administration process will be denied.

Ordinarily, the rehabilitation process itself will not be ‘employment’. However, claims for new injuries caused by a rehabilitation process must be determined on a case-by-case basis, having regard to the

specific circumstances of that claim.

## Increase in treatment or incapacity on existing claims

An increase in treatment or incapacity may occur on an existing claim. It may be apparent that the cause of the increase may be due to the claim administration or rehabilitation process. In this case, you should first assess whether the employee has suffered a new condition, or an aggravation of a condition. This would be considered a new 'injury' under section 5A of the SRC Act.

If there is a new injury or aggravation, liability for the new or aggravated condition must be determined under section 14 of the SRC Act.

If the employee has not sustained a new condition, or new aggravation of a condition, then the claim for benefits must be assessed in the usual manner against the existing claim. That is, medical treatment must be assessed under section 16 of the SRC Act to identify whether it is required as a result of a compensable injury. Any resulting incapacity must be assessed under section 19 of the SRC Act to identify whether the incapacity is 'as a result of' a compensable injury.

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# Loss of or damage to property

Section 15 of the SRC Act provides compensation for loss or damage to property used by an employee. This applies where:

- an employee is involved in an accident arising out of **and** in the course of employment
- the accident does not cause an injury, and
- the accident results in the loss of or damage to property used by the employee.

## Definition of accident

The word 'accident' has not been defined in the SRC Act. Therefore, we consider its ordinary meaning of an unexpected and unforeseen event, especially one resulting in damage or harm.

Section 15 is only relevant where an employee has an accident. It is not relevant where an employee has accidentally lost or damaged property.

**Example**: An employee leaves her spectacles on the desk. A box or container placed on them breaks the spectacles. Compensation is not payable because the damage did not result from an accident involving the employee.

## Definition of property

Section 4 of the SRC Act defines 'property used by an employee' as 'an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance used by the employee'.

Examples of property that may be covered are:

- spectacles
- hearing aids
- prosthetics
- walking sticks/frames
- wheelchairs
- dentures
- artificial eyes
- other medical or surgical aids or appliances.

## Out of and in the course of employment

For the purposes of section 15 of the SRC Act, the accident has to result in loss or damage to an employee's property where:

- an employee is in the course of their employment, and
- there is a direct relationship between the undertaking of the duties of the employment and the accident.

Review the Injury and disease under the SRC Act for more information on determining if something arises out of or in the course of employment.

Section 15 claims, like most claims for compensation, must be accompanied by a certificate from a legally qualified medical practitioner in accordance with section 54(2)(b).

**Note**: Section 15(3) of the SRC Act provides that liability will not arise where the loss or damage incurred by the employee has resulted from the serious and wilful misconduct of the employee.

## Where an accident does not cause personal injury

Where an employee suffers a compensable injury during the accident, they are not entitled to compensation under section 15. This is because section 15 specifically states '… the accident does not cause injury to the employee …'

However, if the employee suffers an injury during the accident, they can lodge a claim for the injury and liability can be considered under section 14(1) of the SRC Act.

## Repair and replacement of property

Compensation is payable for costs reasonably incurred by an employee for the necessary replacement or repair of the property used by the employee. This means the replacement or repair of the property must be necessary, and the cost must be reasonable.

Such costs shall be taken to include any fees or charges paid or payable by the employee to a legally qualified medical practitioner, dentist or other qualified person for a:

- consultation
- examination
- prescription, or
- other service reasonably rendered in connection with the replacement or repair.

**Note**: There is no provision in the SRC Act to pay compensation for time away from work while waiting for the broken or lost item to be repaired or replaced.

## Assessing loss or damage to property claims

When assessing loss or damage to property claims under section 15, you will need to be satisfied that:

- the employee has had an accident
- the accident arose out of and in the course of employment (refer to Injury and disease under the SRC Act for more guidance on this)
- the accident resulted in the loss of, or damage to, 'property used by an employee'
- the accident did not result in an injury to the employee, and
- the loss or damage incurred by the employee was not as a result of the employee's misconduct.

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# Aggravations, accelerations and recurrences

## Introduction

As the Claims Manager, you may receive a notification from an employee that they wish to claim compensation for an aggravation of a compensable or non-compensable underlying or pre-existing medical condition.

All new claim assessments and determinations must rely on evidence, including documents and information in the claim file. Consult the pages in Gathering claim information, in particular the pages on obtaining medical evidence, for help with information gathering to support your assessment and determination.

Aggravation is not well defined under section 4(1) the SRC Act, and merely indicates that it includes acceleration and recurrence.

### Requirements for liability

You must be satisfied that the employee suffers from an existing condition before you can find that the employee has sustained an aggravation of that condition. The employee's employment must have the requisite causal connection with the claimed aggravation for liability to arise These are detailed in:

- section 5A(1)(c) – the aggravation must have arisen out of or in the course of employment, and
- section 5B(1) – the aggravation must have been contributed to, to a significant degree, by the employee's Commonwealth or licensee employment.

You should consider the following guiding principles when assessing an aggravation:

- Physiological change is not a necessary pre-condition to establish that an aggravation has been sustained.
- An increase or intensification in symptoms brought on by a work-related activity may be enough to amount to an aggravation even though no pathological changes take place (see *Federal Broom Co Pty Ltd v Semlitch [1964] 110 CLR*; *Commonwealth v Beattie [1981] 53 FLR* 191; *Tippet v Australian Postal Corporation [1998] FCA 88*).

If you are uncertain about how to assess an aggravation or what evidence to request, you should discuss the claim with your Assistant Director or Injury Manager. Further advice can be sought from the Clinical Panel. You will have these discussions in triage.

To determine liability for an aggravation of an existing compensable condition, see Newly reported conditions.

### Medical terminology

As there are a number of medical terms that you may encounter, this page offers guidance to help you determine whether a condition is an aggravation (which may be an 'aggravation', 'acceleration', 'exacerbation', or 'recurrence') or part of the normal pathology of the existing condition.

Where there is an aggravation, an important distinction is whether it is a temporary aggravation or permanent aggravation (see Duration of an aggravation). In claims management, we refer to

permanent aggravations (of any kind) as ‘aggravations’ and temporary aggravations as ‘temporary aggravations’ or ‘exacerbations’.

The following table provides descriptions of terms you may encounter in medical claims information. Detailed guidance can be found under each section heading.

| | |
|---|---|
| aggravation | *Made worse* - An aggravation occurs when an underlying or pre-existing condition is worsened causing a change to the employee's physiology or symptoms. |
| permanent aggravation | The aggravated condition will be worse forever. |
| temporary aggravation / exacerbation | A temporary worsening of an underlying or pre-existing condition without persistent effect. An exacerbation of a condition is temporary or self-limited. The injury is likely to cause only a transient increase in symptoms without any persistent effects and usually involves a limited period of impairment, medical treatment and/or time off work after which the employee returns to his or her pre-injury state. |
| acceleration | *Sped up* - An underlying or pre-existing condition may be accelerated by a specific incident or sequence of events (must be work-related to be compensable). Acceleration of the natural progression of an underlying or pre-existing condition means that the condition has progressed at a much faster rate than it otherwise would have as a result of a specific incident or sequence of events. This is a type of aggravation.<br><br>**Note:** An underlying or pre-existing condition may worsen over time without any intervening stimulus. The cause of the aggravation must be identified in order for an aggravation to be appropriately diagnosed and for liability to be determined. If the cause of the aggravation cannot be identified, the symptoms being experienced may represent the natural progression of the condition. |
| recurrence | *Came back, or another symptomatic episode* - The symptoms of a previous condition or injury re-emerge through the ordinary stresses and strains of daily living and working, or through a specific incident (this is a type of aggravation). |
| flare up | A flare up is used by medical practitioners to mean different things. A flare up may fall |

| | |
|---|---|
| | within the definition of an aggravation of a condition, or instead describe the expected symptoms of the pre-existing condition (see existing conditions with symptoms that fluctuate). |
| existing conditions with symptoms that fluctuate (i.e. not aggravation, acceleration or recurrence) | Conditions whose symptoms can rise and fall irregularly in number or level. An increase in symptoms that may be experienced in the workplace from time to time can be consistent with the persistent effects and the enduring nature of the existing / original condition. |

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# Aggravation

Aggravation under the SRC Act includes acceleration and recurrence. However, the courts have found that an aggravation can be interpreted as an existing condition that **has been made worse.** That is, it is not an existing condition that has simply become worse because of the natural progression of the condition. Something must happen to cause an aggravation, leading the existing condition to be made worse.

An existing condition may or may not be compensable under the SRC Act. An employee can have an existing condition which may be subsequently aggravated by a work-related incident or other employment factors. The aggravation must have the requirements for liability under sections 5A or 5B as relevant.

**Example**: An employee suffered a small rotator cuff tear in their right shoulder as a result of playing tennis for years. One day at work the employee tripped and used their right arm to break the fall. The force of using their right arm to break the fall resulted in the small tear becoming much larger. The employee lodged a claim in which liability was accepted for an aggravation of the pre-existing small rotator cuff tear in the right shoulder.

## Break in causation

An important factor in determining if a newly reported condition is an aggravation is causation. Two terms, ‘chain of causation’ and ‘break in causation’ are relevant to your assessment.

‘Chain of causation’ relates to how a condition occurred and whether that condition resulted from:

- a new, identifiable, triggering factor, or
- a re-emergence of pre-existing symptoms.

‘Break in causation’ means that a new cause has supervened (happened as an interruption or change to an existing situation).

You should assess whether the pre-existing symptoms from the existing condition have ceased or become clinically insignificant. This can further assist with deciding whether the newly reported condition:

- should be treated as a new claim for an aggravation
- is merely a continuation of pre-existing symptoms
- is a worsening of symptoms, possibly resulting from another compensable condition or the effects of a non-compensable condition.

## Exacerbation or temporary aggravation

Exacerbation is not defined under the SRC Act. However, Legally Qualified Medical Practitioners (LQMPs) may use this term interchangeably with temporary aggravation.

An exacerbation can be a temporary worsening of an underlying or pre-existing condition without persistent effect. The condition later recovers back to its baseline or pre-worsening level. An exacerbation does not involve a permanent structural change or permanent worsening in the underlying or pre-existing condition. It usually involves limited medical treatment and time off work after which the employee returns to pre-injury status.

If symptoms are only transiently increased and the natural history of the underlying or pre-existing condition is not permanently altered, then this should be considered as an exacerbation or a temporary aggravation.

**Example**: An employee reaches below a desk to move a computer box and experiences left-sided lower back pain. He has an MRI scan which shows degenerative change of the lumbar spine L4/5, L5/S1 facet joints on the left. The diagnosed condition is arthritis of L4/5, L5/S1 facet joints. There is a degenerative nature to the employee's symptoms and the condition existed prior to the work incident but the employee was not showing any symptoms. After receiving some medical treatment, the employee's left sided lower back pain improved to the level it was at before the work incident (i.e. total elimination of pain).

## Duration of an aggravation

Where an employee's employment has significantly contributed to the aggravation of an underlying or pre-existing condition and the work factors are deemed compensable, compensation is payable for the duration of the aggravation.

Consideration should be given to the extent of the work-related aggravation. It may be that the effects of the aggravation are **temporary** and may cease sometime in the future. Temporary implies a return to pre-injury or 'pre-aggravation' status for the employee. Where medical evidence establishes this, liability for the compensable component of the condition may be determined as no longer present. However, an aggravation can also be **permanent**. In this circumstance the employee may continue to be entitled to compensation. ‘Permanent’ implies that the aggravated condition will be worse forever as a result of something which has happened, as opposed to the natural progression of an illness or disease.

You should request the employee's treating legally qualified medical practitioner (LQMP) and/or other treating practitioners to provide their opinion on whether they consider the employee's aggravation to be temporary or permanent in nature.

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## Acceleration

While the SRC Act includes 'acceleration' in the definition of aggravation, the courts have ruled that acceleration 'connotes the hastening of the normal underlying disease'. '*Connotes*' means *imply or suggest an idea in addition to the literal or primary meaning*.

An acceleration can be a quickening of a pre-existing pathological process (a process involving or caused by a physical or mental disease or injury). An acceleration must be due to a work-related incident or employment contribution. A work-related incident may make an underlying or pre-existing condition evident long before it would have been noticed and cause the condition to manifest sooner.

Degenerative diseases, where employment factors have accelerated the degenerative process, could be considered as an acceleration. With existing conditions that involve some form of degeneration, you need to consider whether the degeneration has been accelerated by a work-related incident or other employment factors. Specialist medical opinions may assist you in this.

An acceleration will only occur where the circumstances of a condition do not meet the definition of a permanent aggravation.

Aggravation should be positively excluded as a definition prior to considering acceleration.

**Example**: An employee suffers underlying osteoarthritis of the knee joint. They twist their knee at work, and the condition becomes symptomatic or more symptomatic resulting in an increase in pain and loss of function. It leads to further degeneration within the joint. The medical evidence supports that the pathological process is the osteoarthritis, and its impact has been worsened or quickened by the work-related incident which has brought forward the need for the employee to undergo knee replacement surgery.

When considering whether an underlying or pre-existing condition has been accelerated by a work-related incident (or other employment factors), the Claims Manager needs to consider whether:

- the condition would not have manifested as soon as it did if not for the work-related incident or other employment factors
- the existing condition became symptomatic or more symptomatic (e.g. resulting in an increase in pain and loss of function) as a result of the work-related incident or other employment factors.

These considerations may help you to decide whether acceleration has occurred. That is, the existing condition would not have manifested as soon as it did if not for the work related incident or other employment factors. This subsequently brought forward the need for incapacity or medical treatment, such as the need for surgery.

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## Recurrence

The SRC Act includes 'recurrence' in the definition of aggravation (section 4(1)).

A recurrence is where the symptoms of a previous condition or injury re-emerge either spontaneously or through the ordinary stresses and strains of daily living and working. 'Recurrence' differs from an

aggravation which is where the symptoms of an underlying or pre-existing condition are worsened and precipitated by a **new incident** that should be regarded as a new injury and claim.

**Recurrence of non-compensable condition:**

Where an identifiable work-related event or trigger causes a re-emergence of symptoms in a non-compensable pre-existing condition, a 'recurrence' has likely occurred and liability for an aggravation may be found, provided that the requirements of liability under section 5A or 5B as relevant are met.

Where symptoms of a pre-existing non-compensable condition re-emerge or worsen spontaneously or without a specific trigger that meets the required causal connection with the employee's employment, the symptoms likely relate to the ongoing effects of the pre-existing non-compensable condition and liability will not be established.

**Recurrence of compensable condition:**

A recurrence of a compensable pre-existing condition can occur when symptoms re-emerge spontaneously because of the ordinary stresses and strains experienced during activities of daily living or due to employment-related factors.

When assessing how the re-emergence of symptoms occurred, a decision maker should consider whether:

- there is a continuation of the pre-existing symptoms resulting from the original injury, or
- a new causative factor or fresh injury has occurred to break the link between the original compensable injury and subsequent recurrence of symptoms.

If you can't identify a trigger causing a re-emergence of symptoms, and the medical information supports that the current symptoms are due to the original compensable injury, it is likely a continuation of the compensable injury and liability to pay further compensation will fall back on the initial claim.

Where the symptoms from the original compensable injury have ceased or become clinically insignificant and the medical information supports that:

- a new identifiable employment-related trigger has intervened to break the link between the original injury and subsequent incapacity or need for medical treatment, and has caused a worsening of symptoms, **the injury should be treated as a new claim**. The requirements for liability regarding causal connection with employment must be met (sections 5A or 5B as relevant).
- a new identifiable non-employment-related trigger has intervened to break the link between the original compensable injury and subsequent incapacity or need for treatment, and has caused a worsening of symptoms, **liability is unlikely to be established.**

**Example:** An employee has an accepted claim for their lower back. One day the employee reaches for a coffee mug on a shelf at home. The action of reaching out was not excessive and is a normal day to day living activity. However, the employee's symptoms associated with their previous compensable condition had not completely resolved. The employee experienced more severe symptoms in exactly the same position as their earlier and continuing symptoms after reaching for the coffee mug.

When assessing a recurrence, you are required to consider:

- the cause of the condition and decide whether it meets the definition of aggravation or recurrence
- whether there is a relationship between the original injury and the current symptoms
- whether the parts of the body affected now are the same as or related to those affected initially
- whether the employee's symptoms of a previous condition or injury re-emerged either spontaneously or because of the ordinary stresses and strains of daily living and working
- whether there is evidence to indicate that the employee appeared to recover and then suffered a recurrence of the previous condition or injury.
- whether the circumstances of aggravation or recurrence meet the requisite causal test in sections 5A(1)(c) or 5B(1) of the SRC Act as relevant.

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## Conditions that fluctuate in symptomology

There are conditions whose symptoms can rise and fall irregularly in number or level. That is, they fluctuate in symptomatology (the set of symptoms characteristic of a medical condition or exhibited by a patient).

A ‘reactive episode’ is the period of time where people experience symptoms associated with a given stimulus or situation.

Because symptoms can fluctuate, a reactive episode does not necessarily mean there is a new injury. An increase in symptoms that may be experienced in the workplace from time to time does not automatically constitute a new injury. Instead, it can be consistent with the persistent effects and the enduring nature of the existing / original condition.

An employee may have an existing claim and provide notification that they wish to claim for an aggravation of a compensable condition as a result a new work incident. Along with the requirements for liability regarding causal connection with work, you will need to establish whether:

- the employee merely experienced an increase in symptoms in the workplace
- the increase in symptoms in the existing condition resulted in incapacity or medical treatment
- the increase is consistent with the persistent effects and enduring nature of the existing condition
- there is evidence to indicate that the underlying or pre-existing compensable or non-compensable condition fluctuates in symptomatology.

**Example:** An employee has an accepted claim for a psychological condition for which they were taking medication, receiving medical treatment and participating in a gradual return to work.

The employee advises the Claims Manager managing their existing claim that they have been experiencing conflict with their manager and wish to claim for an aggravation of their psychological condition. The employee’s treating specialist’s opinion was that the employee did suffer from an increase in their original psychological symptoms as a result of the conflict with the manager.

However, the employee’s psychological condition did not require an increase in medication, further medical treatment, or result in time off work. The original psychological condition was not made worse by the employee’s employment. Therefore, an additional injury had not occurred to warrant a new claim, as the original psychological condition was not aggravated (made worse).

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## Flare up

Another term that legally qualified medical practitioners (LQMPs) and other treating practitioners use is ‘flare up’. Flare up is not a legislative term. However, a flare up may fall within the definition of an aggravation, temporary aggravation or recurrence.

The term is generally used as a descriptive term by medical professionals in its ordinary usage, as ‘a sudden appearance or worsening of the symptoms of a disease or condition’.

Flare up in a medical context may imply the natural rising and falling of an underlying pathological process without any specific identifiable trigger. However, use of the term flare up in the courts has generally implied a return to pre-flare up levels of the injury.

Depending on the evidence provided and the circumstances of a case, if a flare up has a known cause, which is distinct from the original injury, it should be considered an aggravation, likely of a temporary nature. Alternatively, if a flare up is considered to be a continuation of an original injury it may be best described as a recurrence.

**Example**: An employee that suffers from chronic back pain may often have periodic flare ups requiring medical treatment which can be regarded as recurrences.

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## Underlying and pre-existing medical conditions

An underlying or pre-existing medical condition is not, in itself, compensable under the SRC Act. However, an employee can have an underlying or pre-existing condition which may be aggravated by a work related incident or other employment factors.

A medical examination with an independent specialist may be required in the presence of underlying or pre-existing conditions, to help clarify the contribution of work to an employee’s current presentation.

### Underlying medical conditions

An underlying medical condition refers to a condition that may be hidden by something more obvious and may or may not be present with another medical condition. Underlying medical conditions may contribute to another symptom or disease. Many underlying medical conditions may also be considered co morbidities (co diseases).

In the context of a claim, an underlying condition can be relevant in that it could affect a newly reported condition or be directly related to the onset of that condition.

An underlying condition can:

- be present before any other medical conditions emerge, including the newly reported condition claimed by the employee
- be discovered at the same time the employee claims compensation for a new condition
- occur after (and be independent of) an employee's work-related injury and, depending on what that condition is, have an influence on the presentation of the work-related condition.

Examples of underlying medical conditions include:

- obesity
- diabetes.

## Pre-existing medical conditions

A pre-existing condition is a medical condition that existed before the onset of the compensable condition. It can be caused by injury, age-related degeneration or may be congenital. It is a condition an employee is aware of and has or is being treated for.

Pre-existing conditions include conditions such as:

- arthritis
- asthma
- obesity
- epilepsy
- diabetes
- carpal tunnel syndrome
- psychological conditions
- heart problems including hypertension
- a previous workers compensation injury.

**Example:** An employee lodges a claim for compensation for neck pain as a result of working long hours at work. They have previously been involved in a motor vehicle accident, sustaining a soft tissue injury to the cervical and thoracic spine. They received ongoing physiotherapy treatment for the injury which was continuing at the time of the work-related injury. In this case, the cervical condition from the motor vehicle accident is a pre-existing condition which is directly relevant to the claimed work condition.

## Symptomatic underlying and pre-existing conditions

'Symptomatic' is the term used to describe an underlying or a pre-existing condition in which signs or symptoms are suffered. A condition may be symptomatic before a work-related incident occurs.

**Example**: An employee suffers from osteoarthritis in their right knee and also underwent surgery for a meniscus tear some years ago. The employee has continued to suffer pain in their right knee and receive medical treatment, even after the surgery. One day at work, the employee walked over to visit another work colleague. When they stood up and commenced walking, they rolled their ankle, fell, and landed heavily on their right knee. The employee sustained a further trauma to the right knee. The employee's pain and symptoms which were related to their underlying/pre-existing non-compensable right knee condition (i.e. osteoarthritis) were symptomatic because they existed prior to the fall the employee sustained at work.

## Asymptomatic underlying and pre-existing conditions

‘Asymptomatic’ is the term used to describe a condition (underlying or pre-existing) in which no signs or symptoms are suffered. A condition may be asymptomatic before a work-related incident occurs. In these cases, the underlying or pre-existing condition is present but not discovered until medical tests, such as x-rays, or other investigations have been undertaken.

If an asymptomatic condition becomes symptomatic due to an employee's employment, they may have suffered an aggravation.

**Example:** An employee was involved in a motor vehicle accident where their car was rear-ended by another driver who was speeding. After the accident, the employee underwent x-rays and other diagnostic images of their spine which showed that they had an underlying, asymptomatic, degenerative disc disease (DDD) in their spine. The DDD was not problematic for the employee, nor did they show any signs or symptoms of the disease prior to the accident. The accident rendered the employee's DDD in their spine symptomatic, which resulted in them suffering from on-going chronic symptoms.

## Underlying and pre-existing conditions that overlap in definition

An 'underlying’ condition is not defined in the SRC Act, however, ‘underlying’ is defined in the Macquarie Dictionary to mean ‘existing beneath the apparent aspect of’. An underlying condition is therefore a medical condition that may be but does not need to be hidden by something more obvious.

A ‘pre-existing’ condition is not defined in the SRC Act. However, ‘pre-existing’ is defined in the Macquarie Dictionary to mean ‘existing beforehand’. A pre-existing condition is therefore a medical condition that existed before the onset of the claimed condition.

A medical condition can be both an underlying and a pre-existing condition which is illustrated in the examples provided below:

**Example:** An employee had osteoporosis which was present for some years prior to sustaining an injury at work. The injury led to a compression fracture of a thoracic vertebra. In this example, the osteoporosis that pre-existed the work-related injury rendered the individual more vulnerable to compression fractures than an individual who did not have osteoporosis. This means the osteoporosis was an underlying condition. The osteoporosis was known about before the injury, and therefore was also a pre-existing condition.

**Example:** An employee has a BMI (body mass index) of 35 which is considered obese. They sustain a neck injury in a work situation and subsequently put on 20kg. The employee claims that sleep apnoea has developed as a result of the weight gain following the neck injury. In this case, the employee has an underlying condition of obesity. Obesity is a causative factor for the development of sleep apnoea and this underlying condition needs to be considered by Comcare in any liability determination regarding sleep apnoea.

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# Assessing underlying and pre-existing medical conditions

As Claims Manager, you need to gather information about an employee's underlying and/or pre-existing conditions. The information will help you to gain an understanding and a comprehensive history of the underlying or pre-existing conditions. This includes the level of impairment / symptomatology experienced (if any) prior to the claimed injury.

You need to evaluate the employee's pre- and post-injury state. Establishing how an employee was functioning pre- and post-injury state will assist with considering:

- whether they have suffered an aggravation (that has the required causal connection with employment) to their condition
- the extent of that aggravation
- the expected level of recovery, and
- when the effects of the work aggravation ceased (i.e. the employee has returned to their pre-aggravation level of function/symptomatology).

When assessing liability for an underlying or pre-existing condition, a Claims Manager may need to consider:

- evidence in relation to the employee's pre- and post-injury state
- the cause of any pathology demonstrated through radiological investigations
- whether any pathological changes have taken place to the underlying or pre-existing condition
- the natural progression, extent or severity of the underlying or pre-existing condition
- evidence in relation to the employee's underlying or pre-existing compensable or non-compensable condition
- whether the underlying pathology was symptomatic or asymptomatic prior to the work-related incident or the contributing employment factors
- the extent to which the underlying or pre-existing compensable or non-compensable condition has been affected by the newly reported condition (or vice versa).

The above considerations are a guide only. There may be other factors that are relevant to a case which have not been covered in the above. Consult with your Injury Manager in the first instance for more help.

To obtain information about an employee’s condition pre- and post-injury, you should source information from relevant treating practitioners. This could include obtaining:

- clinical notes – to determine the presence and level of underlying or pre-existing conditions at the time of injury or before the injury
- copies of any diagnostic tests and/or investigations concerning the employee’s pre- and post-injury condition
- a medical report from an employee’s treating practitioner
- an independent medical examination – to assess the employee’s pre- and post-injury symptomology in detail and source answers to specific questions regarding the claimed aggravation.

**Note:** If you are uncertain about the factors to assess or what evidence to request, you should discuss the claim with your Assistant Director or Injury Manager and seek further advice, if necessary, from the Clinical Panel.

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# Decision making under the SRC Act

Published 06/10/2025

## Decision making under the SRC Act

Comcare makes timely and accurate decisions that meet the requirements of the SRC Act and afford natural justice to those impacted. This page provides guidance to help you make and prepare to communicate your decision about initial liability.

## Introduction

Comcare makes important decisions that have an impact on the lives of people making a claim, their families, their employers and the community more broadly. Decisions about rehabilitation, whether compensation is payable, and how much compensation to pay, are referred to as **determinations**. The full list of **determinations** that can be made is in section 60 of the SRC Act.

Along with this page, more resources on decision-making are available in the Decision making under the SRC Act online legislative training module. There is also scheme guidance available, Best practice decision making under the SRC Act.

### Legislation surrounding decision making

Section 61 requires a determination to be in writing and that it must set out:

- the terms of the determination (i.e. what has been decided)
- the reasons for the determination, and
- the right to seek a reconsideration if dissatisfied with the determination.

Section 61(A) requires that a claim for compensation under section 14 of the Act must be determined within the periods prescribed by the '*Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023*' (the Regulations).

Section 62(6) requires Comcare to determine all reconsideration requests made by the employee within the period prescribed by the Regulations.

These timeframes do not apply to requests for reconsideration made by the employer or a reconsideration of own motion undertaken by the Claims Manager.

Section 69(a) requires that Comcare's decisions are made accurately and quickly.

Section 72 requires that, when making decisions according to section 69(a), Comcare:

a. shall be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities,
b. is not required to conduct a hearing, and

c. is not bound by the rules of evidence.

In other words, your decisions need to be based on clear and cogent information and demonstrate sound judgement, i.e. balance of probabilities (more likely than not).

### Natural justice

While making and communicating decisions under the SRC Act, you should ensure natural justice is applied and your decision is communicated in an empathetic manner. For further guidance, refer to Natural justice and Communicating with an employee.

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## Prescribed timeframes for liability decision making

From 1 April 2024, in accordance with section 61(1A) of the SRC Act, Comcare must determine a new initial claim for compensation made under section 14 of the SRC Act within:

- 20 calendar days for claims made in respect of an injury (other than a disease) or an aggravation of an injury (other than a disease)
- 60 calendar days for claims made in respect of a disease.

The prescribed or statutory timeframes apply to all claims received on or after 1 April 2024, including claims for secondary or newly reported conditions that are registered as new claims that meet the requirements set out under section 54 and are determined under section 14 of the SRC Act.

The prescribed timeframes only apply to all determinations made under section 14 of the SRC Act and do not apply to determinations made under any other section of the SRC Act including:

- section 16 (medical expenses)
- section 17 (compensation from injuries resulting in death).

Also, the prescribed timeframes do not apply to:

- secondary conditions against an existing claim
- continuation of the employee's compensable condition against an existing claim.

The prescribed timeframes start on the day that Comcare receives an initial claim for compensation that meets the requirements under section 54, i.e. a written claim for compensation is lodged with a **compliant medical certificate** from a legally qualified medical practitioner attached.

### Determinations due to be made on Saturday, Sunday or public holiday

As the prescribed timeframes for decision-making are calendar days and not business days, the calendar day timeframe includes Saturdays, Sundays and public holidays.

However, if the final calendar day for determining liability on an initial claim falls on a Saturday, a Sunday, or a public holiday in the place where the decision is being made, then the decision can be made the next day. The public holiday must be in the State/Territory in which:

- the decision is being made; and
- the office where the decision is being made is closed for the entire day.

**Example: The last calendar day for determining liability on an initial claim managed by a Claims Manager in the Canberra office falls on Monday, 1 June 2026.**

**The ACT Reconciliation Day public holiday falls on the same date. As the Canberra office will be closed for the entire day due to the ACT public holiday, the initial determination can be made on Tuesday, 2 June 2026.**

It is important that you have regard to other legislation that may enable an employee to seek a review of a determination not made within the prescribed timeframes.

## Stop clock provisions

The prescribed timeframes above do not apply to certain periods ('stop clock' provisions) in which Comcare seeks further information or material in relation to the claim or is advised by the employee that they will be providing further evidence to support their claim for compensation.

These stop clock provisions essentially ‘freeze’ the calendar day count while you wait for the additional information or evidence that you have requested, or that the employee has advised they will be providing to Comcare in support of their section 14 claim.

The table below shows when the stop clock provisions can be used and when the stop clock provisions start and end.

| Periods in which calendar days are not counted | | | |
|---|---|---|---|
| **Item** | **Situation** | **Start day** | **End day** |
| 1 | Comcare requires the employee to undergo an examination by a legally qualified medical practitioner under section 57 of the SRC Act. | The day that Comcare gives the employee written notice of the requirement to attend a section 57 examination. | Comcare receives the results of the examination. |
| 2 | Under section 58, Comcare requests information or a copy of a document from the employee. | The day Comcare provides the written request to the employee. | The earlier of the following days:<br><br>a) the day Comcare receives the requested information or document.<br><br>b) the day that the employee advises Comcare that they do not have the requested information or document. |
| 3 | Under section 71, Comcare requests information or documents from the employer. | The day Comcare provides the written request to the employer. | The earlier of the following days:<br><br>a) the day Comcare receives the information or documents<br><br>b) the day that the employer notifies Comcare that they do not have the information or documents within their possession, custody, or control |

| Periods in which calendar days are not counted | | | |
|---|---|---|---|
| | | | c) the day on which Comcare reasonably believes that the employer has failed to comply with the request. |
| 4 | The employee advises Comcare that they will provide further evidence in relation to their claim. | The day that Comcare is advised by the employee. | The earlier of the following days:<br><br>a) the day Comcare receives the further evidence<br><br>b) the day the employee advises Comcare that no further evidence will be provided<br><br>c) the day that Comcare reasonably believes that the employee will not provide any further evidence. |
| 5 | Comcare considers that it is reasonable and necessary to obtain further medical evidence e.g. medical report from:<br><br>a) the employee's legally qualified medical practitioner<br><br>or<br><br>(b) a legally qualified medical practitioner nominated by Comcare. | The day that Comcare requests the further medical evidence, e.g. the medical report. | The day that Comcare receives the report. |

The stop clock provisions do not apply in the following instances where:

- you **informally** request information from the employee
- you request information from allied health professionals including psychologists (even if the claim is undetermined).
- the employee submits a request for a reconsideration under section 62 of the SRC Act.

## Recording stop clock actions in Pracsys

Whenever you need to use the stop-clock provisions, you must record these actions in the '*Manage Initial Liability Assessment*' (MILA) or '*Manage Initial Liability*' (MILT) dashboards in Pracsys.

There are no limits on the number of times the calendar day count is frozen while further evidence is being sought to assist with determining an initial claim for workers' compensation under section 14.

However, it is important that the stop clock provisions are only used when you require further information to make a determination under section 14.

You must not use the stop clock provisions as a tool to delay making a determination on the claim.

If you have sufficient information to make a sound or accurate determination on the claim and can obtain more information without the use of the stop clock provisions, then you should do so.

Whenever possible, you should make determinations within the 20 or 60 calendar day timeframes.

**See:** Procedure to record stop clock actions in MILA or MILT

## Tasks that can be done while waiting for information

During the period in which the stop clock provisions do apply, you should continue to work on the claim. This supports timely decision-making for when:

- the additional information or evidence has been received; or
- you have been advised that the additional information or evidence will not be provided; or
- you reasonably believe that the additional information or evidence will not be provided.

Further work that may be undertaken by you during the time when the calendar days are not being counted include:

- requesting other information
- timely follow ups on other requests for information
- reviewing information on the claim file
- consulting with other relevant stakeholders e.g. Injury Managers, Assistant Directors, or the Clinical Panel
- any other tasks which will support the timely determination of the claim.

## Communicating with employees

You should keep the employee informed of the status of the initial liability decision including any period in which the calendar days are not counted due to the stop clock actions.

You should also advise them of when the stop clock period is due to end and when the calendar day count starts again.

You must record all conversations between you and the employee in the '*Manage Claim Comment*' (MCOM) function in Pracsys.

The Section 14: Acknowledge Claim (Letter template. 608) letter can be used to:

- inform the employee that Comcare has received their section 14 claim
- advise the employee of the prescribed timeframes
- inform them of any medical information that you have requested from their treating practitioners or that you require from them.

## What happens if the employee disagrees with the use of the prescribed timeframes?

The prescribed timeframes including the periods during where the stop clock provisions apply are not determinations under section 60(1) of the SRC Act. Therefore, the provisions are not subject to the reconsideration provisions under section 62 of the SRC Act and cannot be appealed through the Administrative Review Tribunal.

If an employee disagrees with a Claims Manager's conduct associated with applying the prescribed timeframes, they will need to make an application to the Federal Court of Australia.

For further information refer to:

- Pracsys User Guide: - How to update MILA or MILT

- Prescribed Timeframes - FAQs
- Scheme Guidance - Statutory timeframes for decision making under the SRC Act
- *Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023*

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## Making a determination

To make a determination, you need to do the following:

- Ensure relevant investigations have been undertaken.
- Consider any legal advice received while forming your own assessment on the issues.
- Identify the legislative test(s) that apply and the factual questions that need to be answered under that test. See the Legislative tests and initial liability section for details.
    - Gather any information needed to answer those factual questions. Consult the pages in Gathering claim information, in particular the pages on obtaining medical evidence, for help with information gathering.
    - Assess that information and form a view about the facts.
    - Apply the facts to the legislative tests.
- Draft a determination for quality assurance (QA) and decision-making by the delegate.

**Note:** In many cases, the delegate will be your Assistant or Director, Claims Operations.

- Following QA and decision-making by the delegate, finalise the determination and communicate the decision to the employer and the Rehabilitation Case Manager.

The liability and decision-making section of Claims Management in Comcare – The way we manage claims sets out who the delegate is for various decisions under the SRC Act.

If you discover something that does not look right, feel right, or when you discover concerning or previously undisclosed information either from the employee or another source (employer, rehabilitation provider etc) that is relevant and has the potential to impact the management of a claim, please refer to the "Just Ask" process.

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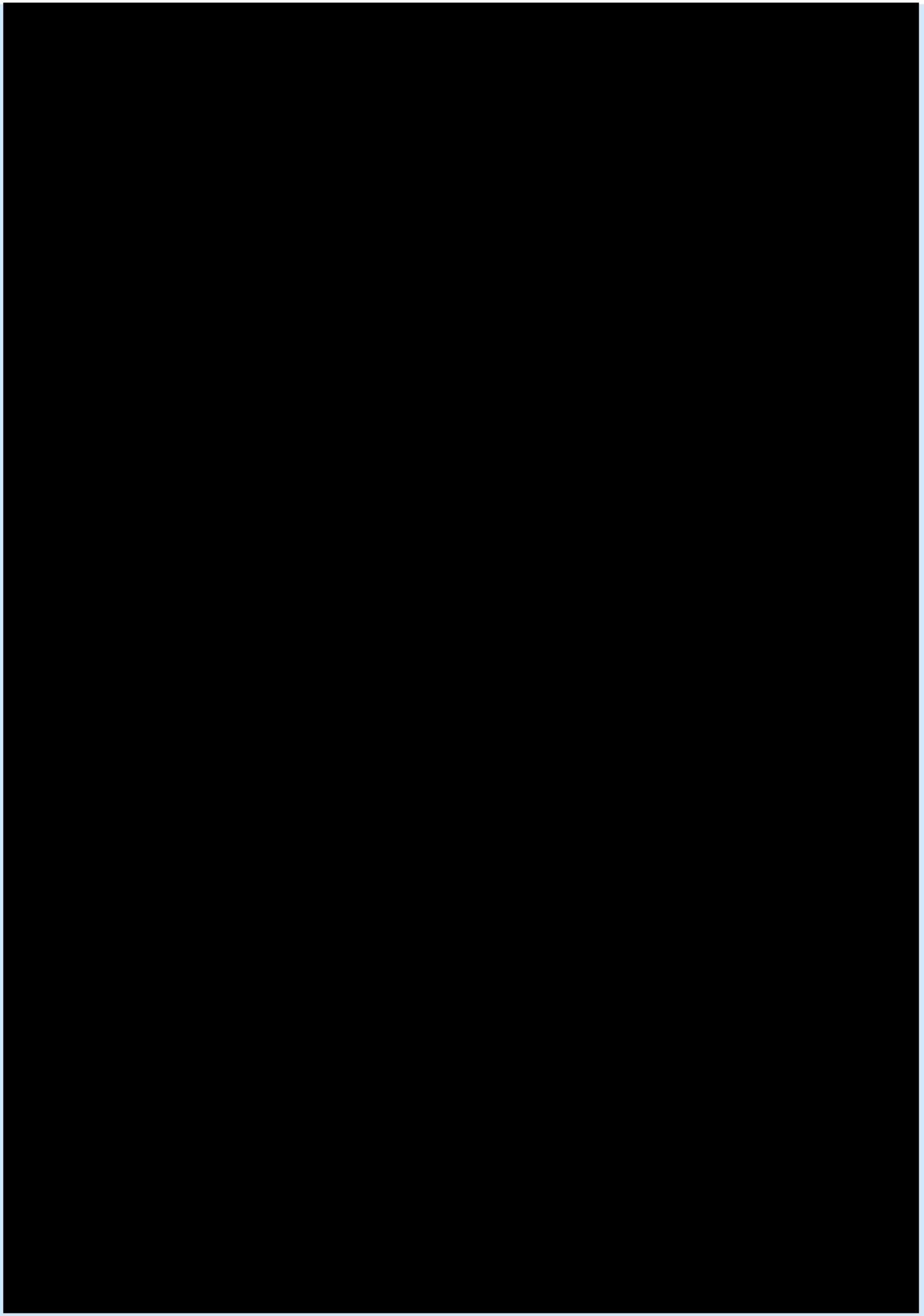

# Natural justice

## Introduction to natural justice

Natural justice (also known as 'procedural fairness') applies to all government decision-making. It requires that you make decisions fairly by ensuring due process is observed, particularly where the decision may harm the rights, interests or legitimate expectations of an individual or organisation.

Natural justice can be enforced by courts, administrative tribunals, and the Commonwealth Ombudsman. If there has been a breach of natural justice in making a decision, a court can declare the decision to be invalid.

There are two key pillars to natural justice – the fair hearing rule, and the rule against bias.

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## The 'fair hearing rule'

The fair hearing rule requires (per *Kioa v West [1985] 159 CLR 550*) that a person who could be adversely affected by a decision must:

- be notified of the proposed decision
- be informed of the relevant issues and information applicable to the determination, and
- have the opportunity to be heard prior to the decision being made.

The notice should provide enough information to allow the person to make effective use of their right to respond and present their case. The nature of the evidence relied upon, the decision and its possible consequences should be described. Details of where and how a submission can be made should be given.

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## The 'rule against bias'

The rule against bias requires decision-makers to make determinations in a manner that is objective and impartial, and to not have pre-judged a decision in the absence of evidence.

Bias in decision-making may be actual or apprehended:

- **Actual bias:** there is proof that a decision-maker has pre-judged a decision or has displayed some form of prejudice which could not be swayed by the evidence.
- **Apprehended bias:** where a fair-minded hypothetical observer, with knowledge of the objective facts, would reasonably perceive that the decision-maker was not impartial or unprejudiced in making the determination.

**Conflicts of Interest**

The bias rule will also be breached if there is an actual or perceived conflict of interest. This is where you have, or could be perceived to have, a personal interest in a matter that may prevent you from

performing your duty impartially.

Not every conflict of interest can be foreseen. Sometimes a conflict becomes known only after a decision making process has started. For example, in the course of dealing with a matter, you might become aware that a friend or family member is a party, a witness or an applicant.

To avoid breaching the rule against bias, you must promptly disclose your interest. In consultation with your Assistant Director, you must take reasonable steps to resolve the conflict.

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## Natural justice in Comcare

When managing a claim for compensation, you should keep the following natural justice principles in mind:

- Employees should be kept up to date with what is happening on their claim.
- Decision-makers should be unbiased and act in good faith.
- Each party with an interest in a determination being made is entitled to be notified of the decision, to ask questions, and to have the opportunity to present their case (see sections 54, 62 and 64 of the SRC Act).
- Decision-makers should focus on relevant considerations and extenuating circumstances by reference to the available evidence.
- Justice should be done and be seen to be done.

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# Making and entering an initial liability determination

## Making and entering an initial liability determination

The liability determination process begins with the Claims Manager reviewing the claim file and applying the appropriate legislative tests to the evidence. See the section on Legislative tests and initial liability for guidance on this process.

In making your decision, you must ensure that the information has been considered, the legislation has been appropriately applied and that natural justice principles have been followed. See Decision making under the SRC Act for further guidance.

Once the determination has been made, you must enter the determination into Comcare's systems and communicate the determination. To enter, finalise and communicate an initial liability determination, there are several steps that need to be completed. This section provides help on this process.

### In this section

### Entering and finalising an initial liability determination

This page takes you through the steps involved in entering your liability determination in Pracsys, finalising the determination after quality assurance, and communicating the determination. It includes the following information:

- iClaim. This is a decision support system on Pracsys, accessed through 'MILA', used to determine initial liability for new workers' compensation claims. There are also sections on:
  - Preparing a claim for iClaim including the related procedure.
  - Amending an initial determination in iClaim, including the related procedure.
- Drafting your determination letter. This includes sending your letter to your Assistant Director for quality assurance.
- Finalising and communicating the determination in Pracsys. This includes saving and sending the letter, contacting the employee and Rehabilitation Case Manager by phone, and updating the Treatment Plan in Pracsys. The related procedure to finalise the determination is found here.

### International Classification of Diseases

When determining initial liability for a new workers' compensation claim, the claimed condition must be entered into Pracsys using a descriptor from the International Classification of Diseases (ICD).

Part of your task in entering liability information in iClaim is to add the correct code to the claimed condition. This page provides general information on ICD codes and descriptors to help you in communicating with employees.

# Entering and finalising an initial liability determination

## Introduction

An initial liability determination involves several processes. First, you must use the guidance under the Legislative tests and initial liability section to assess the claim and come to a decision on whether to accept or decline liability. Consult the pages in Gathering claim information, in particular the pages on obtaining medical evidence, for help with gathering evidence for your assessment and determination.

Support for this process includes triage discussions, as well as consultation with Senior Claims Managers, Technical Capability Officers, Injury Managers and your Assistant Director.

Once you have come to a decision regarding liability, you need to enter, finalise and communicate the determination. This involves the following steps. Each step is detailed in the linked sections below. Note that the Pracsys process steps are also detailed in the Pracsys user guide, pages 19-24:

1. In Pracsys, update MILA ('Manage Initial Liability Assessment') and access iClaim from MILA.
2. After completing the iClaim process, return to MILA and draft your determination letter.
3. Send your draft letter to your Assistant Director for review and quality assurance (they will also review the claim and liability determination details in the CDETR function).
4. Finalise the claim in CDET ('Create Claim Determination'). This includes the following:
    a. Save your drafted and reviewed letter and send it to the employee.
    b. Contact the employee and Rehabilitation Case Manager by phone.
    c. Update the Treatment Plan in Pracsys.
5. For claims that have been accepted for a closed period only see Step 8 of the Procedure to finalise the claim determination.

If the employee is experiencing financial distress, they may be able to seek financial assistance from other sources. For more information, please refer to the Comcare website.

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## iClaim

iClaim is a decision support system used for determining initial liability for all new workers compensation claims. iClaim is accessed through Pracsys.

iClaim was developed to assist Claims Managers make consistent, legislatively based initial liability determinations. **Before using iClaim**, you first:

- complete triage
- review the claim file and assess the evidence. Consult the pages in Gathering claim information, in particular the pages on obtaining medical evidence, for help with gathering the evidence you need for your determination.
- update any outstanding details in Pracsys (such as Date of Injury) (see Procedure to prepare a claim for iClaim), and
- come to a decision about how you will determine the claim.

This is a collaborative process, outlined further in the Legislative tests and initial liability section and the Decision making under the SRC Act section.

After you have completed this work, iClaim is the place, accessed through MILA in Pracsys, which allows you to enter all of your decision-making steps and information to ensure the determination is supported by the appropriate evidence and legislative tests.

**Note:** All claims must be processed through iClaim. This is a mandatory task that must be performed before liability for an injury can be accepted or disallowed.

## How iClaim is structured

iClaim provides the stages below for a new claim to progress through. Following these stages leads you to the final liability determination.

1. Claim compliance:

- verification of claim registration details
- notice of injury (see Written notice of injury for guidance)
- employee definition (see Employees under the SRC Act for guidance).

2. Medical relationship:

- classification of claimed injury using the Australian version of the International Classification of Diseases, 9th Edition (ICD-9-CM), commonly known as ICD codes (see International Classification of Diseases for guidance)
- investigation of reasonable causation of the claimed injury
- identification of whether the claimed condition is an injury or disease, or aggravation of an injury or disease (see Injury and disease under the SRC Act and Aggravations, accelerations and recurrences for guidance).

Employment relationship (see Injury and disease under the SRC Act for guidance):

- investigation of injury claims arising out of or in the course of employment
- investigation of disease claims – employment significantly contributed to the condition
- investigation of exclusionary provisions (see Exclusionary provisions for guidance).

Liability decision:

- recommendation to accept or reject liability
- investigation of secondary conditions.

## Questions and commentary in iClaim

The initial liability provisions have been written as questions in iClaim. The questions are answered by the Claims Manager (you). Your response to a question, whether ‘yes’, ‘no’ or ‘uncertain’, will drive another question. This continues until a final determination outcome, to accept or disallow the claim for an injury or disease, has been reached.

Each question in iClaim is numbered and supported by commentary. The commentary provides text about the question with links to relevant documentation, including stories to explain common words and phrases.

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# Preparing a claim for iClaim

Once you (the Claims Manager) have been allocated to manage a new workers compensation claim, you first need to review all the evidence provided. Then there are several actions, outlined below, that you need to complete to prepare the claim for iClaim. You need to do this before you process the claim through iClaim.

**Note:** A claim must be processed through iClaim before the Claims Manager can commence drafting a determination to be sent to the employee.

## Review Date of Injury

Amending a date of injury (DOI) must occur prior to processing a claim through iClaim. If a DOI is not amended, this can result in the wrong legislative test being applied to the claim in iClaim.

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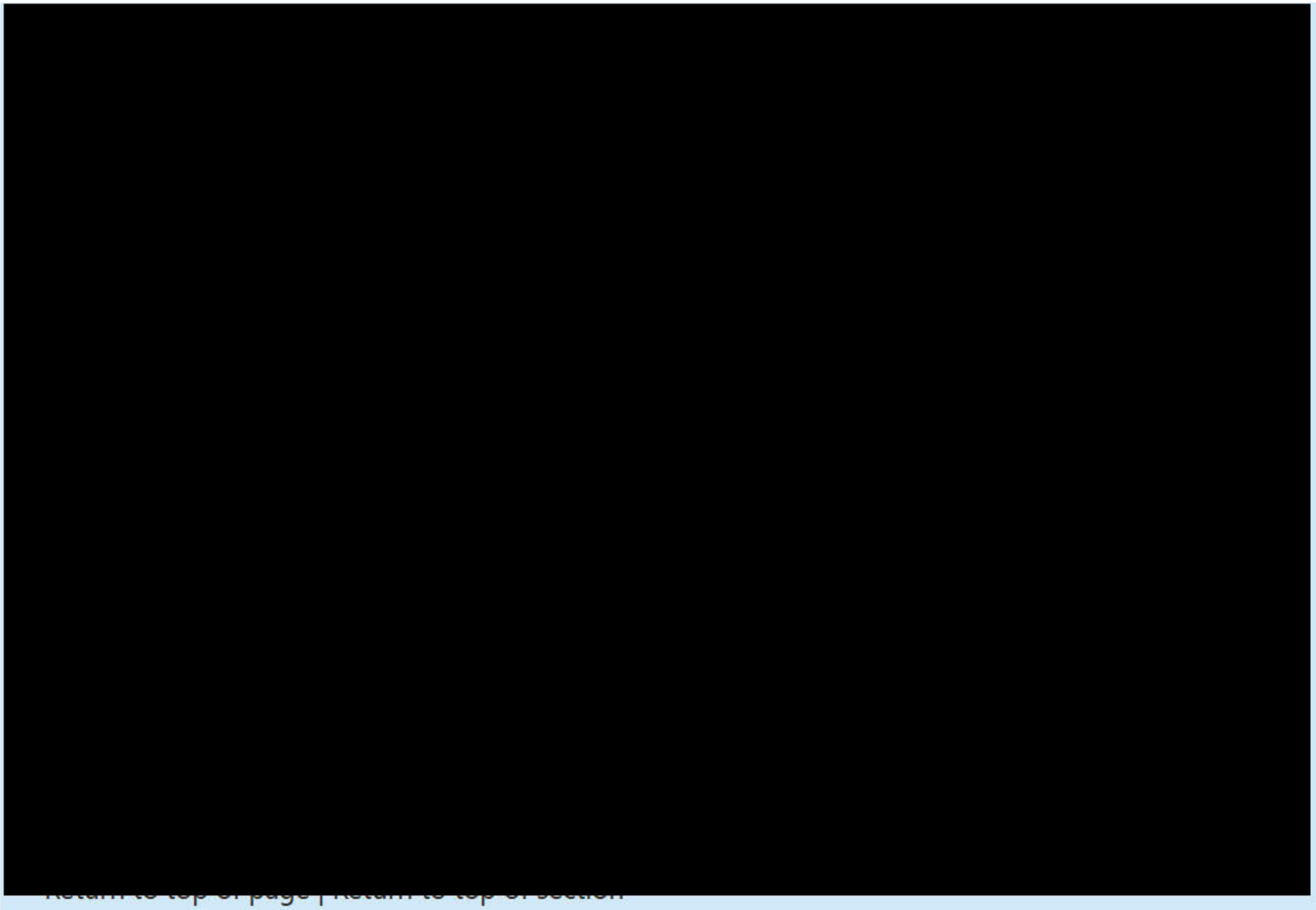

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## Amending an initial liability investigation in iClaim

The Manage Initial Liability Assessment (MILA) function in Pracsys is used to amend any aspect of a previously created 'Initial Liability Investigation.'

There may be circumstances where you need to amend an initial liability investigation in iClaim such as where you have received feedback that changes are required. Amendments can be made by the Claims Manager who created the provisional liability determination. Changes can also be made by another person who is reviewing the provisional liability decision, such as an Assistant Director.

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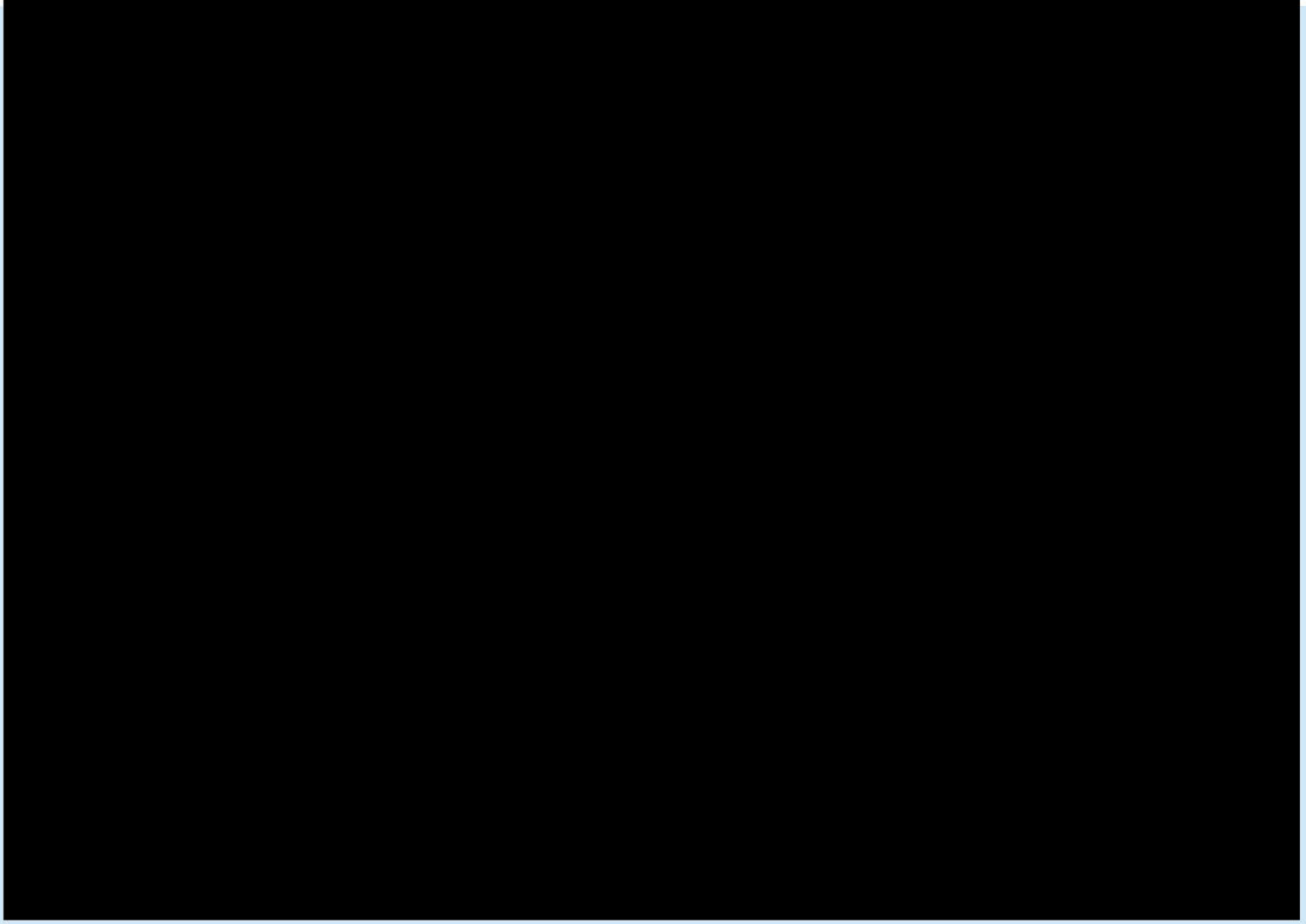

## What is included in a determination letter?

A notice of determination must include the following:

- information on which findings are based
- findings of fact
- reasons for decision, and
- the decision itself.

Providing the reasons for your decision is a fundamental part of drafting a determination. This is because it gives a person who is affected by a decision a clear explanation for the decision. The person can then decide whether to exercise their rights of review and appeal. And, if they decide to do so, they are then able to act in an informed manner.

When you prepare a notice of determination it must:

- be clear and set out in a logical manner
- include all information on which the findings were based
- contain all steps of reasoning, linking the facts to the decision so the person reading the determination can understand how the decision was reached, and
- identify and express the relevant statutory requirements and tests.

### Information on which the findings were based

A notice of determination must refer to the information on which each finding of fact is based. It is not enough to simply list all the documents that were considered in reaching the decision. When referring to information, you do not always have to quote it, as long as the evidence can be readily identified.

The evidence might be identified by stating its source. For example, 'the medical report from Dr X dated 20 June'.

## Explaining the decision

The notice of determination should allow the person to understand:

- the information that was relied upon to make the decision and
- how the decision was reached.

If the information is conflicting, or you do not agree with certain information, then you should explain why certain information is preferred.

The notice of determination must provide the reasons for your conclusions. This may require that you mention the legislation, relevant principles of case law, or any other relevant guidelines or practices that were taken into account. The criteria and other factors considered in making the decision, and why material facts were accepted, should also be noted.

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# Finalising and communicating the determination

At this stage, 'Provisional Liability' has been created through iClaim (see iClaim for guidance on this process), and you have drafted the initial liability determination in Pracsys. Once the delegate has reviewed your draft determination and made a decision, the determination can be finalised, and a claim determination can be created in Pracsys.

This section provides guidance on creating (drafting) a claim determination in Pracsys, after you have created provisional liability through iClaim.

The '*Create Claim Determination'* (CDET) function in Pracsys allows you to finalise a section 14 liability determination for a new workers compensation claim. This records all details about the determination, including who prepared and who approved the determination. The CDET function must be completed to allow the determination letter to be finalised and distributed.

A section 14 liability determination in Pracsys can be finalised via the '*Manage Initial Liability Assessment*' (MILA) function in Pracsys. This happens at the end of the liability process. To review, the steps involved are as follows:

1. First, you assess the claim and come to a decision.
2. You then process the claim through iClaim.
3. Next, you create and draft:
    - a letter to the employee and
    - the liability claim plan.
4. Follow appropriate Quality Assurance requirements to get your determination quality assured.
   5. Once the above is complete, finalise the liability determination in MILA according to the procedure below.

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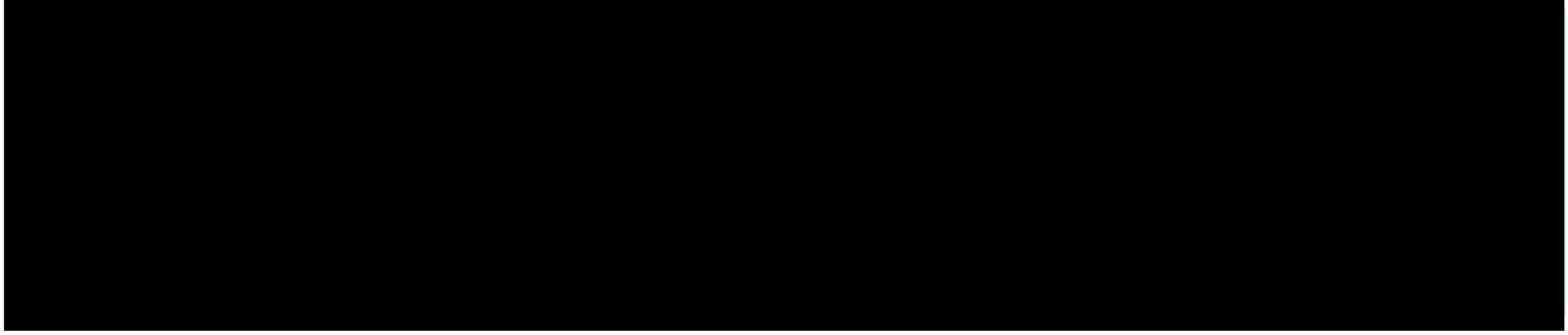

# International Classification of Diseases

## Introduction

Comcare has adopted an internationally accepted medical standard for classifying diseases and injuries. The standard adopted was the International Classification of Diseases and Injuries - CM 2nd Edition (ICD 9). The ICD is revised periodically and is currently in its 11th revision, which came into effect on 1 January 2022.

When determining initial liability for a new compensation claim or a newly reported condition, coding a condition is a mandatory task that you (the Claims Manager) must perform.

### What is ICD?

The International Classification of Diseases (ICD) is the standard diagnostic tool for epidemiology, health management and clinical purposes. The ICD is used to monitor the incidence and prevalence of diseases and other health problems. It is also used to classify diseases and other health problems recorded on health records and death certificates.

### What are ICD codes?

ICD codes are numeric designations given to every diagnosis, description of symptoms, and cause of death attributed to human beings. They are used to provide a consistent method of labelling conditions and are internationally recognised and applied. Codes are categorised into major groups, with each group then providing more detailed codes for specific conditions.

**Example:** Group 840: sprains and strains of shoulder and upper arm.

Sub-group 840.4: rotator cuff (capsule) sprain.

ICD codes are used in Australia by medical practitioners, the Commonwealth and State governments, Australian hospitals, and other health-related organisations to understand, classify and describe conditions.

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## ICD descriptor and diagnosed condition

### What is an ICD descriptor?

An 'ICD descriptor' is the name attributed to an International Classification of Diseases (ICD) code to describe the condition. For Comcare's purposes, the ICD descriptor will identify the type of injury/disease for which liability is being determined.

Once an ICD code is selected for a claim, its corresponding ICD descriptor is assigned as the determined condition.

**Example:** Select ICD code: 995

The corresponding condition descriptor is assigned as 'wrist strain'.

## ICD descriptor vs diagnosed condition

There may be instances when there is a difference between the wording of the condition which liability was determined for, and the condition diagnosed by a treating practitioner.

The difference in the descriptions is because Comcare links conditions with the ICD codes. Therefore, the wording of a determined condition may differ from the wording provided on an employee's claim for compensation or medical certificate.

ICD classifications are standard classifications. Therefore, it is not always possible to find a descriptor to precisely match a diagnosed condition provided by a treating practitioner. In these cases, you should choose the closest match to the diagnosed condition.

## The role of classifying a diagnosis

It is not a treating practitioner's role to provide a classifiable diagnosis in accordance with the ICD-9 or any other medical manual. However, in order to accept liability and pay compensation Comcare requires a diagnosis.

Ultimately, it is your role to identify and link a diagnosed condition to an ICD code and, if unable to do so, contact the treating practitioner for further clinical information.

**Note:** If you are experiencing difficulties with classifying a diagnosis or finding an ICD code, you should discuss the claim with your Assistant Director or Injury Manager.

## Issues with how a condition has been described

An employee (or their representative) may raise an issue with how a condition has been described. For example, that the description:

- does not accurately reflect the condition diagnosed by the treating practitioner or suffered by the employee
- affects the employee’s statutory entitlements to compensation under the SRC Act.

The SRC Act uses the term 'injury' and does not provide how an 'injury' should be coded or labelled. It is important to note that the label or code adopted for a condition is not a determination under the SRC Act. The selection of an ICD code is an administrative function which is carried out separately to the determination of liability in respect of a claim.

The ICD code used on a claim does not impact upon the statutory benefits that an employee may be entitled to under the SRC Act.

**Permanent impairment:** When assessing a compensation claim for a permanent impairment (PI), you are required to assess the degree of impairment resulting from an 'injury', as defined under the SRC Act. The fact that an employee's condition was initially labelled as something seemingly non-permanent, such as a ‘strain’, should make no difference to the PI determination.

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# Reporting on ICD Codes

## Codes provided in the DSM IV/5 vs ICD-9

The Diagnostic and Statistical Manual of Mental Disorders (DSM) IV and DSM 5 are medical manuals that provide a framework for evaluating psychiatric opinions. The DSM only covers psychological injuries, whereas the International Classification of Diseases (ICD) covers all types of injuries and diseases.

The coding system and descriptions in the DSM manuals may not match the codes in ICD-9. Also, the descriptions of psychological injuries may vary between the manuals. Often, you will need to convert a DSM diagnosis into an ICD-9 code.

## Reporting on ICD codes

ICD coding is used for statistical and research purposes in Comcare and assists with the analysis of primary and secondary conditions, such as secondary psychological injuries.

**Important:** Any condition determined that is additional to the primary condition should be recorded in Pracsys using the Amend Claim Determination (ADET) screen as a secondary condition.

### TOOCS

Type of Occurrence Classification System (TOOCS) is another reporting system used in Comcare. The Scheme Reporting and Analysis team undertook a project in which ICD major groups were mapped to the Nature of Injury (NOI) component of TOOCS. Entering TOOCS codes is part of the process of registering a new claim and is completed by the Claims Administration and Support (CAIS) team.

Your responsibility (as Claims Manager) will be to check the TOOCS code is correct during the liability process, when following the Procedure for preparing a claim for iClaim (Step 3, checking TOOCS codes).

If you would like to know about entering TOOCS codes, see Entering TOOCS codes.

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