



SECTION 58 REQUESTS FOR INFORMATION OR DOCUMENTS AND REFUSAL TO DEAL WITH A CLAIM

PURPOSE

To provide decision makers with scheme guidance in relation to requesting information from employees under section 58 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

BACKGROUND

Section 58 of the SRC Act provides the relevant authority¹ with the power to request, in writing, that an employee provide information or documents to them. This provision can be used where a claim has been received and the relevant authority is satisfied that the employee:

- > has information or a document that is relevant to the claim; or
- > can obtain the information or document without unreasonable expense or inconvenience.

If the employee refuses or fails to provide the information requested in the outlined time period, without a reasonable excuse, the relevant authority may refuse to deal with the claim. This refusal to deal with the claim will continue until the employee provides the information requested in the notice of request.

GUIDANCE

Receipt of a claim

In regard to the legislation, the term 'claim' is considered to refer not only to the initial claim for compensation, but each further individual claim for a benefit under the legislation². Therefore, a section 58 request can be made by the relevant authority whenever they have been asked to determine liability for a benefit and require information or documents from the employee to do so. Based on this information it is possible for multiple refusal to deals being active on a single compensation claim. Importantly, section 58 cannot be used to request information where there is no claim for a benefit being made by the employee.

Information which may be requested

The relevant authority must be sure that the employee has the information or document being requested or is able to obtain it without incurring unreasonable expense or inconvenience.

Information is considered to be any knowledge that may have been communicated in relation to the employee or their claim. It includes any documents that contain text or images, including electronic data such as emails.

¹ Relevant authority is defined under s4 of the SRC Act as: in relation to an employee employed by a licensee, the licensee; and, in relation to any other employee – Comcare. Under the Delegated Claims initiative, Comcare has delegated its powers as a relevant authority to the Delegated Claims Agencies.
² A claim for benefit under the legislation can include claiming for: medical treatment, incapacity payments, household help, attendant care, aids or appliances, permanent impairment, death and funeral benefits

Examples of the types of information or documents that may be requested from an employee include, but are not limited to:

- > current medical certificates
- > clinical notes and reports
- > payslips or proof of earnings
- > financial statements/details

Requests for information under section 58 must relate directly to the claim being determined and may be used for claims management purposes thereafter in relation to the same injury.

When not to use section 58

Section 58 should not be used in the following circumstances:

- > to seek information that does not relate to the claim at hand
- > to compel employees to provide an authority to release which they otherwise would not agree to sign
- > to compel employees to provide consent for the employer to collect information or documents from a third party
- > to compel employees to provide documents protected by legal professional privilege.

Note: decision makers must have regard to the *Privacy Act 1988* at all times during the claims management process.

Notice of request under section 58

Section 58 requires the relevant authority to issue a notice in writing to the employee clearly outlining what information or documents are required. The notice should also include the date the information or document is due to be provided by and the likely consequences if the employee refuses or fails to provide the information or document without reasonable excuse.

The notice under section 58 must provide the employee with a minimum 28 days to respond, however, a decision maker can approve an extension of time to the employee if it is requested and they believe it is appropriate to provide.

Requests made under section 58 are not determinations under the SRC Act³. This means that these decisions are only able to be appealed through Administrative Decision Judicial Review (ADJR) proceedings through the Federal Court. Decision makers must ensure that the decision to use section 58 to request information or documents or to refuse to deal with a claim is sound and reasonable in the circumstances and follows sound decision-making principles.

Non-compliance with a section 58 request

The relevant authority may refuse to deal with a claim if an employee refuses or fails, without reasonable excuse, to provide the information or document requested within the 28-day period.

What constitutes a reasonable excuse depends on the facts of each case, however, the following are examples of what may be considered reasonable:

- > the information or document which has been requested no longer exists
- > the employee is not able to obtain the information, such as an employee's treating practitioner refuses to provide a report
- > the employee's medical condition precludes them from obtaining the required information
- > costs associated with obtaining the information cannot be met by the employee
- > the employee disputes the relevance of the documentation to their compensation claim, and is able to provide reasons to justify this
- > the employee did not receive the notice in time to comply with the request.

³ Section 60(1) of the SRC Act provides a definition of 'determination', detailing decisions which are determinations subject to reconsideration.

The refusal to deal will apply only to the claim the information or document was requested for and will stay active until the employee provides the information or document. The decision-maker must continue to determine all other claims received that do not relate to the refusal to deal during this time.

Where the information or document is required for multiple claims for benefits the decision maker should make it clear to the employee as part of their notice of request that the information or document is required for multiple benefits to be determined. If a refusal to deal then applies, the decision maker must make it clear which claims they are refusing to deal with.

Where a request under section 58 has resulted in a refusal to deal and the employee subsequently gives the information to the decision maker, the refusal to deal must be promptly lifted. The decision maker must then determine the claim in front of them and any other claims submitted since the refusal to deal was applied.

Example

An employee has made a claim for a period of incapacity. The decision maker is aware that the employee is working two days per week in another job, however they have failed to provide a payslip from that employment for the period of incapacity being claimed. The decision maker issues a notice under section 58 of the SRC Act for these documents. When issuing the written notice, the decision maker considers the following:

- > whether the employee would reasonably have the payslips
- > if they did not have the payslips, whether the employee could obtain them without unreasonable expense or inconvenience
- > whether the notice clearly outlines that the employer is seeking payslips from the employee
- > whether the notice outlines the date on which the payslips must be provided by
- > whether the notice clearly outlines what the consequences of not supplying the payslips will be.

The employee fails to provide the payslips or a reasonable excuse as to why this information could not be provided. The employee continues to claim incapacity for other periods. The decision maker issues a letter under section 58(3) advising the employee of their decision to refuse to deal with the claim for incapacity, until they are provided with the requested payslip/s.

The employee provides their payslips for all claimed incapacity periods. The decision maker must now make determinations regarding all incapacity claims in front of them.

FURTHER INFORMATION

For further information, please contact Comcare's Scheme Policy and Design team on 1300 366 979 or email: scheme.policy@comcare.gov.au.