* [ACT Government and Commonwealth Workers Compensation (Comcare Scheme)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ACT_Government_and_Commonwealth_Workers_Compensation_40Comcare_Scheme_41)
  + [Reading Guide](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Reading_Guide)
  + [The Comcare Scheme](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#The_Comcare_Scheme)
    - [Other Commonwealth Schemes](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Other_Commonwealth_Schemes)
  + [﻿Summary of Eligibility and Entitlements](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Summary_of_Eligibility_and_Entitlements)
    - [Facts and Related Procedures](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Facts_and_Related_Procedures)
    - [﻿Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Injury_Not_Resulting_in_Death)
    - [﻿Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Injury_Resulting_in_Death)
    - [﻿Accident Not Causing Injury](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Accident_Not_Causing_Injury)
    - [﻿Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Non_45Employee_47Dependant_Claims)
  + [﻿Employee and Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Employee_and_Employment)
    - [Who is an Employee?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Who_is_an_Employee_63)
    - [Employment at the Relevant Time](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Employment_at_the_Relevant_Time)
  + [﻿Ailment, Injury and Aggravation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Ailment_44_Injury_and_Aggravation)
    - [﻿What is a Compensable Injury?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#What_is_a_Compensable_Injury_63)
    - [What is an Ailment?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#What_is_an_Ailment_63)
    - [What is an Injury in the Primary Sense?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#What_is_an_Injury_in_the_Primary_Sense_63)
    - [What is an Aggravation?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#What_is_an_Aggravation_63)
    - [﻿When is an Ailment, Injury or Aggravation Suffered?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#When_is_an_Ailment_44_Injury_or_Aggravation_Suffered_63)
      * [Assessing Liability and Entitlements](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Assessing_Liability_and_Entitlements)
      * [Assessing Entitlements Only (Ailments)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Assessing_Entitlements_Only_40Ailments_41)
    - [Injured before 01/12/1988](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Injured_before_01_4712_471988)
    - [Injured after 30/11/1988](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Injured_after_30_4711_471988)
    - [Rules for Ailments](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Rules_for_Ailments)
      * [﻿Material Degree](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Material_Degree)
      * [Significant Degree](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Significant_Degree)
      * [Deeming Provisions (Ailments)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Deeming_Provisions_40Ailments_41)
    - [﻿Rules for Injuries](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Rules_for_Injuries)
      * [Arising Out of, or in the Course of, Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Arising_Out_of_44_or_in_the_Course_of_44_Employment)
      * [Interval or Interlude in Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Interval_or_Interlude_in_Employment)
      * [Deeming Provisions (Injuries)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Deeming_Provisions_40Injuries_41)
    - [What is not a Compensable Injury?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#What_is_not_a_Compensable_Injury_63)
  + [﻿Accident](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Accident)
  + [﻿Dependency](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Dependency)
  + [﻿Compensation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Compensation)
    - [﻿Medical Treatment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Medical_Treatment)
      * [Meaning of Medical Treatment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Meaning_of_Medical_Treatment)
      * [Journey and Accommodation Expenses](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Journey_and_Accommodation_Expenses)
    - [﻿Incapacity for Work](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Incapacity_for_Work)
      * [Step-Down at 45 Weeks](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Step_45Down_at_45_Weeks)
      * [﻿Normal Weekly Earnings](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Normal_Weekly_Earnings)
      * [Adjustments to Normal Weekly Earnings Amount](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Adjustments_to_Normal_Weekly_Earnings_Amount)
      * [﻿Relevant Period](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Relevant_Period)
      * [Adjustments to Weekly Compensation Amount](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Adjustments_to_Weekly_Compensation_Amount)
      * [Redemption of Weekly Compensation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Redemption_of_Weekly_Compensation)
    - [﻿Household Services](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Household_Services)
    - [﻿Attendant Care Services](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Attendant_Care_Services)
    - [﻿Alterations, Modifications, Aids and Appliances](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Alterations_44_Modifications_44_Aids_and_Appliances)
    - [Impairment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Impairment)
      * [Permanent Impairment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Permanent_Impairment)
      * [Non-Economic Loss](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Non_45Economic_Loss)
      * [Interim, Final and Reassessment Determinations](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Interim_44_Final_and_Reassessment_Determinations)
      * [﻿Prescribed Thresholds](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Prescribed_Thresholds)
      * [Approved Guide](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Approved_Guide)
      * [﻿Alternative Claim for Damages](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Alternative_Claim_for_Damages)
    - [﻿Death Benefit](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Death_Benefit)
    - [﻿Funeral Expenses](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Funeral_Expenses)
  + [﻿Rehabilitation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Rehabilitation)
    - [﻿Rehabilitation Programs](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Rehabilitation_Programs)
      * [﻿Rehabilitation Assessment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Rehabilitation_Assessment)
      * [Rehabilitation Program](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Rehabilitation_Program)
    - [﻿Suitable Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Suitable_Employment)
      * [Duty to Provide or Assist to Find Suitable Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Duty_to_Provide_or_Assist_to_Find_Suitable_Employment)
      * [﻿Who is the Relevant Employer?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Who_is_the_Relevant_Employer_63)
      * [What is Suitable Employment?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#What_is_Suitable_Employment_63)
  + [Preclusion, Suspension and Repayment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Preclusion_44_Suspension_and_Repayment)
    - [Summary of Provisions](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Summary_of_Provisions)
    - [Recovery of Overpayments](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Recovery_of_Overpayments)
  + [﻿﻿Notice of Injury or Accident](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Notice_of_Injury_or_Accident)
  + [﻿Claims for Compensation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Claims_for_Compensation)
    - [Types of Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Types_of_Claims)
    - [﻿Survival of Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Survival_of_Claims)
    - [Requesting Claim Documents](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Requesting_Claim_Documents)
  + [﻿Investigation and Determination](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Investigation_and_Determination)
    - [Investigation of Claim](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Investigation_of_Claim)
    - [Decision on Claim (Determination)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Decision_on_Claim_40Determination_41)
    - [﻿Right of Appeal (Reconsideration)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Right_of_Appeal_40Reconsideration_41)
    - [Other Decisions](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Other_Decisions)
  + [﻿Reconsideration](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Reconsideration)
    - [Reconsideration of Determination](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Reconsideration_of_Determination)
    - [Decision on Reconsideration (Reviewable Decision)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Decision_on_Reconsideration_40Reviewable_Decision_41)
    - [﻿﻿﻿Right of Appeal (Merits Review)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Right_of_Appeal_40Merits_Review_41)
  + [﻿Merits Review](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Merits_Review)
    - [Proceedings in the Administrative Appeals Tribunal](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Proceedings_in_the_Administrative_Appeals_Tribunal)
      * [Parties to the Proceeding](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Parties_to_the_Proceeding)
      * [Steps in the Proceeding](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Steps_in_the_Proceeding)
      * [Duty to Assist the Tribunal](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Duty_to_Assist_the_Tribunal)
      * [Bring Forward Evidence 28 Days Before Hearing](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Bring_Forward_Evidence_28_Days_Before_Hearing)
      * [Some Evidence May Not Be Considered](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Some_Evidence_May_Not_Be_Considered)
    - [Possible Outcomes](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Possible_Outcomes)
    - [Decision on Review](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Decision_on_Review)
  + [Other Forms of Review and Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Other_Forms_of_Review_and_Assistance)
    - [Judicial Review](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Judicial_Review)
      * [Appeals from the Administrative Appeals Tribunal](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Appeals_from_the_Administrative_Appeals_Tribunal)
      * [Judicial Review of Administrative Decisions](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Judicial_Review_of_Administrative_Decisions)
      * [Other Forms of Relief](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Other_Forms_of_Relief)
    - [Assistance from Regulators and Administrators](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Assistance_from_Regulators_and_Administrators)
      * [Comcare](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Comcare)
      * [Safety, Rehabilitation and Compensation Commission](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Safety_44_Rehabilitation_and_Compensation_Commission)
      * [Responsible Minister and Department](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Responsible_Minister_and_Department)
      * [ACT and Commonwealth Ombudsman](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ACT_and_Commonwealth_Ombudsman)
      * [Australian Public Service Commission and Parliamentary Service Commission](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Australian_Public_Service_Commission_and_Parliamentary_Service_Commission)
      * [Office of Legal Services Coordination](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Office_of_Legal_Services_Coordination)
    - [﻿Other Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Other_Assistance)
  + [Scheme Employers](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Scheme_Employers)
    - [﻿Current Comcare Scheme Employers](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Current_Comcare_Scheme_Employers)
    - [﻿Former Comcare Scheme Employers](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Former_Comcare_Scheme_Employers)
  + [﻿Deemed Employees](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Deemed_Employees)
    - [﻿Employees Covered by the Comcare Scheme](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Employees_Covered_by_the_Comcare_Scheme)
    - [﻿Persons Not Covered by the Comcare Scheme](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Persons_Not_Covered_by_the_Comcare_Scheme)
      * [Not Employed by the ACT](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Not_Employed_by_the_ACT)
      * [Not Employees](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Not_Employees)
  + [﻿Glossary of Terms](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Glossary_of_Terms)

ACT Government and Commonwealth Workers Compensation (Comcare Scheme)

[28 March 2022 - 11:44](https://www.austlii.community/foswiki/bin/diff/ACTLawHbk/ComcareScheme?rev=103)|  Version 103 |  [IsobelHarris](https://www.austlii.community/foswiki/Main/IsobelHarris)

Contributed by Ben Mason and current to March 2022.

Reading Guide

A term (a word or expression) used in legislation can have either its normal meaning or a special meaning.

Where a term appears in bold italic in this chapter, such as ***injury***or ***significant degree***, the term has a special meaning. Otherwise, the term has its normal meaning.

The term ***injury*** includes a ***disease***, subject to certain rules.

For information about a special or defined term used in this chapter, see [Glossary of Terms](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#GOT).

If you follow a link from one section to another section in this chapter, you can click back on your browser to return to the first section.

This chapter is intended as a general guide. Do not rely on any of the following information in place of independent legal advice.

The Comcare Scheme

The Commonwealth’s workers’ compensation scheme is known as the Comcare Scheme.

The scheme is established by the [Safety, Rehabilitation and Compensation Act 1988](http://www.austlii.edu.au/au/legis/cth/consol_act/sraca1988368/index.html) (Cth) (***SRC Act***). It is named after one of the scheme's regulators, Comcare.

The scheme covers employment by the following:

* the Australian Capital Territory (***ACT***) (for example, employment by an ***ACT*** directorate or authority);
* the Commonwealth (for example, employment by a Commonwealth agency, department or authority); and
* a number of ***licensees***(for example, employment by Australia Post or Telstra).

For information about claims under the scheme, see [Summary of Eligibility and Entitlements](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#SEE).

Other Commonwealth Schemes

Table 1 contains a summary of other Commonwealth schemes, some of which are covered in other chapters of the ACT Law Handbook.

**Table 1—Other Commonwealth Schemes**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=1;up=0#sorted_table) | [**Scheme**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=1;up=0#sorted_table) | [**Summary of Commonwealth scheme**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=1;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=1;up=0#sorted_table) |
| --- | --- | --- | --- |
| ﻿1.1 | Military Rehabilitation and Compensation Scheme | The Commonwealth’s military-specific workers’ compensation scheme is known as the Military Rehabilitation and Compensation Scheme. There are 2 periods of service covered by the Military Rehabilitation and Compensation Scheme:   * service rendered before 01/07/2004, which may be covered by the [Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988](http://www.austlii.edu.au/au/legis/cth/consol_act/sracca1988512/index.html) (Cth) and [Defence Act 1903](http://www.austlii.edu.au/au/legis/cth/consol_act/da190356/index.html) (Cth); and * service rendered after 30/06/2004, which is covered by the [Military Rehabilitation and Compensation Act 2004](http://www.austlii.edu.au/au/legis/cth/consol_act/mraca2004397/index.html) (Cth) (subject to transitional rules). | See [Overview of Veterans Legislation](http://austlii.community/foswiki/ACTLawHbk/OverviewOfVeteransLegislation). |
| ﻿1.2 | Veterans' Entitlements | Certain defence service rendered prior to 01/07/2004 is also covered by the [Veterans’ Entitlements Act 1986](http://www.austlii.edu.au/au/legis/cth/consol_act/vea1986261/index.html) (Cth). | See [Veterans' Entitlements Act 1986](http://austlii.community/foswiki/ACTLawHbk/VeteransEntitlementsAct1986). |
| ﻿1.3 | Seacare Scheme | Whilst Comcare has some functions under the [Seafarers Rehabilitation and Compensation Act 1992](http://www.austlii.edu.au/au/legis/cth/consol_act/sraca1992381/index.html) (Cth), employees to whom that Act applies are not covered by the Comcare Scheme. Rather, they are covered by what is known as the Seacare Scheme, which is similar but not identical to the Comcare Scheme. The Seafarers Safety, Rehabilitation and Compensation Authority (also known as the Seacare Authority) oversees the scheme. | See [seacare.gov.au](http://www.seacare.gov.au/). |
| ﻿1.4 | Parliamentary Injury Compensation Scheme | Comcare has the function of determining and managing claims for compensation and damages in accordance with the Parliamentary Injury Compensation Scheme, established by the Parliamentary Business Resources Act 2017 (Cth), subject to the [Parliamentary Business Resources (Consequential and Transitional Provisions) Act 2017](http://www.austlii.edu.au/au/legis/cth/num_act/pbratpa2017819/index.html) (Cth). The Parliamentary Injury Compensation Scheme is based on some of the provisions in the Comcare Scheme. | See [comcare.gov.au](http://www.comcare.gov.au/the_scheme/pics). |
| 1.5 | Asbestos-related Claims for Compensation and Damages | Comcare also has the function of responding to asbestos-related claims for compensation and damages under the [Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005](http://www.austlii.edu.au/au/legis/cth/consol_act/acocla2005550/index.html) (Cth). Certain claims for compensation and damages can affect rights, entitlements and obligations under the Comcare Scheme. | See [comcare.gov.au](http://www.comcare.gov.au/the_scheme/asbestos_legal). |

﻿Summary of Eligibility and Entitlements

Eligibility and entitlements under the Comcare Scheme do not depend on proving fault on the part of an ***employee's scheme employer***. Instead, access to the scheme depends on the following:

* establishing relevant facts existed before, during and after an injury or accident;
* complying with procedural requirements under the scheme; and
* complying with obligations and timeframes under the scheme.

Facts and Related Procedures

Each row in Table 2 contains a summary of facts and related procedures under the Comcare Scheme. Establishing the facts, and satisfying the procedures, in a particular row may grant access to the scheme.

**Table 2—Facts and Related Procedures**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=2;up=0#sorted_table) | [**Relevant facts**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=2;up=0#sorted_table) | [**Procedural requirements**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=2;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=2;up=0#sorted_table) |
| --- | --- | --- | --- |
| 2.1 | An***injury***suffered by an ***employee*** resulting in ***incapacity for work*** or ***impairment***. | All of the following must be given to the ***relevant authority***:   * written notice of the ***injury*** (time limits apply); * a written claim for compensation (in approved or substantially compliant form); and * a certificate by a legally qualified medical practitioner (in approved or substantially compliant form),   and the claim for compensation must be made by or on behalf of the ***employee***. | See [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID), to help you establish relevant facts and assess what may be available under the Comcare Scheme. |
| 2.2 | ***Medical treatment*** reasonably obtained in relation to an ***injury*** suffered by an ***employee*** (including the supply, replacement or repair of ***property used by an employee***). | Both of the following must be given to the ***relevant authority***:   * written notice of the ***injury*** (time limits apply); and * a written claim for compensation (in approved or substantially compliant form),   and the claim for compensation must be made by or on behalf of the ***employee***. |
| 2.3 | An***injury***suffered by an ***employee*** resulting in death. | Both of the following must be given to the ***relevant authority***:   * written notice of the ***injury*** (time limits apply); and * a written claim for compensation (in approved or substantially compliant form),   and:   * the claim for compensation must be made by or on behalf of at least one **dependant**; and * if there is more than one ***dependant***—a claim for compensation must be made by or on behalf of each ***dependant*** that wishes to receive compensation. | See [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID), to help you establish relevant facts and assess what may be available under the Comcare Scheme. |
| 2.4 | An accident (both of the following must be true):   * resulting in loss or destruction of, or damage to, ***property used by the employee***; and * not causing ***injury*** to the ***employee***. | Both of the following must be given to the ***relevant authority***:   * written notice of the accident (time limits apply); and * a written claim for compensation (in approved or substantially compliant form),   and the claim for compensation must be made by or on behalf of the ***employee***. | See [Accident Not Causing Injury](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ANCI), to help you establish relevant facts and assess what may be available under the Comcare Scheme. |
| 2.5 | An ***injury*** suffered by an ***employee*** in respect of which certain compensation is payable. | A written claim for compensation (in approved or substantially compliant form) must be given to the ***relevant authority*** and the claim must be made by or on behalf of the person who:   * provided ***medical treatment*** in relation to the ***injury***; * incurred expenses transporting ***employee***: * provided ***household services*** or ***attendant care services***; * provided alteration or modification services; * supplied, replaced or repaired aids or appliances; or * paid for or carried out a funeral. | See [Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NEC), to help you assess what may be available under the Comcare Scheme. |

﻿Injury Not Resulting in Death

The following questions may help you to:

* identify relevant facts;
* assess whether compensation, rehabilitation or other benefits are available under the Comcare Scheme to, or for the benefit of, an injured person; and
* identify initial procedural requirements.

These questions are a general guide and the answer to any question should not be relied on in place of independent legal advice.

1. Was the injured person an ***employee*** at the relevant time?  
     
   See [Employee and Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#EAE), then return to this question.  
     
   If 'yes'—go to the next question.  
   If 'no'—the person may not be entitled to compensation under the scheme.
2. Did the ***employee*** suffer an ***injury***?  
     
   See [Ailment, Injury and Aggravation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IDAA), then return to this question.  
     
   If 'yes'—go to the next question.  
   If 'no'—the person may not be entitled to compensation under the scheme.
3. Is compensation payable for the ***injury***?  
     
   For example: Has the ***injury***resulted in ***incapacity for work***or ***impairment***? Has ***medical treatment***been obtained in relation to the ***injury***? See [Compensation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#COMP), then return to this question.  
     
   If 'yes'—go to the next question.  
   If 'no'—the person may not be entitled to compensation under the scheme.
4. Is the ***relevant authority***prevented from paying any or all compensation?  
     
   For example: Was the ***injury***intentionally self-inflicted or caused by the serious and wilful misconduct of the ***employee***? Has the ***employee*** recovered ***damages*** or other compensation in respect of the ***injury***? See [Preclusion, Suspension and Repayment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#EPAS), then return to this question.  
     
   If 'yes'—the person may not be entitled to compensation under the scheme.  
   If 'no'—go to the next question.
5. Has valid notice of the ***injury*** been given to the ***relevant authority***?  
     
   For example: Was written notice of the ***injury*** given to the ***relevant authority*** as soon as reasonably practicable after the ***employee*** became aware of the ***injury***? See [Notice of Injury or Accident](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NOILOD), then return to this question.  
     
   If 'yes'—go to the next question.  
   If 'no'—the scheme does not apply in relation to an ***injury*** to an ***employee*** unless there is valid notice (time limits apply).
6. Has a valid claim for compensation been given to the ***relevant authority***?  
     
   See [Claims for Compensation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#CFC), then return to this question.  
     
   If 'yes'—see Table 3 for a summary of entitlements and conditions under the scheme.  
   If 'no'—compensation is not payable to a person under the scheme unless a valid claim for compensation is made by or on behalf of that person.

**Table 3—Summary of Entitlements and Conditions (Injury Not Resulting in Death)**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=3;up=0#sorted_table) | [**Compensation or benefit**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=3;up=0#sorted_table) | [**How paid or provided**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=3;up=0#sorted_table) | [**Summary of conditions**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=3;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=4;table=3;up=0#sorted_table) |
| --- | --- | --- | --- | --- |
| 3.1 | ***Medical treatment***expenses. | Paid or reimbursed by the ***relevant authority***to the ***employee***. | This compensation is only payable if the ***medical treatment*** was (both of the following must be true):   * obtained in relation to an ***injury***; and * reasonable for the ***employee*** to obtain in the circumstances   and the amount of compensation payable is an amount determined by the ***relevant authority***to be appropriate to that treatment. | See [Medical Treatment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#MT), including for:   * the meaning of ***medical treatment***. |
| 3.2 | ﻿Compensation for ***incapacity for work***. | Paid as a weekly amount by the ***relevant authority*** to either:   * the **employee**; or * the current ***scheme employer*** as reimbursement in some cases. | This compensation is payable either:   * until the ***injury*** no longer results in ***incapacity for work*** or otherwise until pension age; or * if the ***employee*** reached the age that was 2 years before pension age when injured—for a maximum of 104 weeks (whether consecutive or not)   and the amount of compensation is calculated on the following basis:   * for the first 45 weeks—100% of pre-injury ***normal weekly earnings***; and * after the first 45 weeks—whichever is greater:   + a minimum weekly compensation amount, which is increased if there are one or more ***prescribed children*** or ***prescribed persons*** dependent for economic support on the ***employee***, if any; or   + 75%, 80%, 85%, 90%, 95% or 100% of pre-injury ***normal weekly earnings*** depending on the percentage of ***normal weekly hours*** worked by the ***employee*** that week,   less the greater of the amount per week the ***employee***:   * is able to earn in ***suitable employment***; or * actually earns from any employment (including self-employment   and less a further amount or amounts if:   * in relation to an ***employee*** of the Commonwealth or a ***Commonwealth authority***—salary, wages or pay was paid before the claim for compensation for ***incapacity for work*** was determined; * the amount of compensation payable after 45 weeks would exceed the maximum weekly compensation amount; and * the ***employee*** is both retired and receiving a lump sum benefit, pension or both under a ***superannuation scheme*** as a result of the ***employee's***retirement. | See [Incapacity for Work](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IFW), including for:   * how the step-down at 45 weeks works; * the meaning of ***normal weekly earnings***, ***normal weekly hours*** and ***relevant period***, and how to calculate each; * adjustments to ***normal weekly earnings***; * adjustments to the weekly compensation amount; and * redemption of weekly compensation.   See [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates) for current:   * minimum weekly compensation amounts; and * maximum weekly compensation amounts.   See [dss.gov.au](http://guides.dss.gov.au/guide-social-security-law/3/4/1/10) for how to calculate pension age. |
| 3.3 | Compensation for ***household services***. | Paid or reimbursed by the ***relevant authority*** to the ***employee***. | This compensation is only payable if the services were (all of the following must be true):   * obtained as a result of an ***injury***; * of a domestic nature (including cooking, house cleaning, laundry and gardening services); * reasonably required for the proper running and maintenance of the ***employee's*** household; and * obtained after 28 days from the date of the ***injury*** (unless there is financial hardship or the need to provide for adequate supervision of ***children***who are dependent for economic support on the ***employee***),   and the amount of compensation is an amount that is both:   * reasonable in the circumstances; and * no less than 50% of the cost of the services and no more than the maximum weekly compensation amount. | See [Household Services](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#HS), including for:   * the prescribed matters the ***relevant authority*** may take into account in determining if services were reasonably required.   See [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates) for current maximum weekly compensation amounts. |
| 3.4 | Compensation for ***attendant care services***. | Paid or reimbursed by the ***relevant authority*** to the ***employee***. | This compensation is only payable if the services were (all of the following must be true):   * obtained as a result of an ***injury***; * reasonably required for the essential and regular personal care of the ***employee***; * not ***household services***(which may be compensable as ***household services*** compensation); and * not medical or surgical services or nursing care (which may be compensable as ***medical treatment***expenses),   and the amount of compensation is an amount that is the lesser of:   * the amount paid or payable by the ***employee*** for the services; or * the maximum weekly compensation amount. | See [Attendant Care Services](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ACS), including for:   * the prescribed matters the ***relevant authority*** may take into account in determining if services were reasonably required.   See [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates) for current maximum weekly compensation amounts. |
| 3.5 | Compensation for:   * alteration of the ***employee's place of residence*** or ***place of work***; * modifications of a vehicle or article used by the ***employee***; and * aids or appliances for the use of the ***employee*** (or repair or replacement of such aids or appliances). | Paid by the ***relevant authority*** to, or in accordance with, the directions of the ***employee***. | This compensation is only payable if the ***injury*** results in ***impairment*** and the ***employee***(one of the following must be true):   * is undertaking a ***rehabilitation program***; * has completed a ***rehabilitation program***; or * has been assessed as not capable of undertaking a ***rehabilitation program***,   and the alteration, modification, aid or appliance is reasonably required by the ***employee***, having regard to both:   * the nature of the ***employee's impairment***; and * the requirements of the ***rehabilitation program*** (where appropriate),   and the amount of compensation is an amount that is reasonable in light of prescribed matters. | See [Alterations, Modifications, Aids and Appliances](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#AMAAA), including for:   * the prescribed matters the ***relevant authority*** may take into account in determining the amount of compensation. |
| 3.6 | Compensation for:   * ***permanent impairment***; and * ***non-economic loss***. | Paid as a lump sum by the ***relevant authority*** to the ***employee*** within 30 days after the date of the assessment of the amount payable (unless the ***determination*** of the amount is challenged). | This compensation is only payable if the ***injury*** results in ***impairment*** that is both:   * ***permanent***; and * assessed at or above the prescribed ***permanent impairment*** threshold under the ***approved guide***,   and the amount of compensation is calculated on the basis of:   * the degree of ***permanent impairment*** of the ***employee***resulting from the ***injury*** as assessed under the ***approved guide***; * any ***non-economic loss*** suffered by the ***employee*** as a result of the ***injury*** or ***impairment*** as assessed under the ***approved guide***; and * the maximum lump sum amounts for ***permanent impairment*** and ***non-economic loss***. | See [Impairment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#PIANEL), including for:   * the meaning of ***permanent impairment*** and ***non-economic loss***; * assessments under the ***approved guide***; * the prescribed thresholds for compensation; and * an alternative claim for ***damages***.   See [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates) for current maximum lump sum amounts. |
| 3.7 | Compensation for:   * journey expenses; and * accommodation expenses. | Paid by the ***relevant authority*** to the ***employee***. | This compensation is only payable if the ***employee***reasonably incurs expenses either:   * making a necessary journey in connection with obtaining compensable ***medical treatment***, undergoing an examination for a ***rehabilitation assessment*** or undergoing a ***medical examination***; or * remaining, for the purpose of the treatment or examination, at a place to which the ***employee*** has made a journey for that purpose,   and the amount of the compensation is determined by the ***relevant authority*** with reference to all of the following:   * the means of transport available to the ***employee*** for the journey; * the route or routes by which the ***employee*** could have travelled; and * the accommodation available to the ***employee***,   and, in relation to a journey in connection with obtaining compensable ***medical treatment***, the following also apply:   * additional prescribed conditions and considerations; and * maximum rates of compensation. | See one of the following:   * [Medical Treatment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#MT), in relation to obtaining compensable ***medical treatment***; * [Rehabilitation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#REHAB), in relation to undergoing an examination for a ***rehabilitation assessment***; or * [Investigation of Claim](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IOC), in relation to undergoing a ***medical examination***. |
| 3.8 | ***Rehabilitation program***. | Provided by the ***rehabilitation authority*** (or an ***approved program provider*** on behalf of the ***rehabilitation authority***) and paid for by the***relevant authority***. | A ***rehabilitation program*** is only available if the ***injury*** results in either:   * ***incapacity for work***; or * ***impairment***,   and the ***rehabilitation authority*** exercises its discretion to make a ***determination*** that the ***employee*** should undertake a ***rehabilitation program***, having regard to:   * any written ***rehabilitation assessment***; and * other prescribed matters. | See [Rehabilitation Programs](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RP), including for:   * how to request a ***rehabilitation assessment***; and * the other prescribed matters to which the ***rehabilitation authority***must have regard. |
| 3.9 | ***Suitable employment***. | Provided by the ***relevant employer***. | The ***relevant employer*** must take all reasonable steps to either:   * provide the ***employee*** with ***suitable employment***; or * assist the ***employee*** to find ***suitable employment***,   but only if the ***employee*** (one of the following must be true):   * is undertaking a ***rehabilitation program***; or * has completed a ***rehabilitation program***. | See [Suitable Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#SE), for what is meant by ***suitable employment***. |

If a claim for compensation has been made and no decision has been made in relation to the claim, see [Investigation and Determination](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IAD).

If a decision has been made in relation to a claim for compensation, and you are not satisfied with the decision, you may have options (subject to time limits). If the decision is:

* a ***determination***, see [Reconsideration](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RECON);
* a ***reviewable decision***, see [Merits Review](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#MR); or
* any other kind of decision, see [Other Forms of Review and Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#OFOR).

If you require independent advice or assistance in relation to a claim for compensation under the scheme, see [Other Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#OTHER).

﻿Injury Resulting in Death

The following questions may help you to:

* identify relevant facts;
* assess whether compensation or other benefits are available under the Comcare Scheme to, or for the benefit of, a ***child***, ***spouse*** or other ***dependant*** of a deceased person; and
* identify initial procedural requirements.

These questions are a general guide and the answer to any question should not be relied on in place of independent legal advice.

1. Was the deceased person an ***employee*** at the relevant time?  
     
   See [Employee and Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#EAE), then return to this question.  
     
   If 'yes'—go to the next question.  
   If 'no'—the person may not be entitled to compensation under the scheme.
2. Did the deceased ***employee*** suffer an ***injury*** resulting in death?  
     
   See [Ailment, Injury and Aggravation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IDAA), then return to this question.  
     
   If 'yes'—go to the next question.  
   If 'no'—the person may not be entitled to compensation under the scheme.
3. Is the dependent person a ***dependant*** of the deceased ***employee***?  
     
   See [Dependency](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#DEP), then return to this question.  
     
   If 'yes'—go to the next question.  
   If 'no'—the person may not be entitled to compensation under the scheme.
4. Is the ***relevant authority***prevented from paying any or all compensation?  
     
   For example: Was the ***injury***intentionally self-inflicted? Has one or more ***dependants***recovered ***damages*** or other compensation in respect of the ***injury***? See [Preclusion, Suspension and Repayment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#EPAS), then return to this question.  
     
   If 'yes'—the person may not be entitled to compensation under the scheme.  
   If 'no'—go to the next question.
5. Has valid notice of the ***injury***been given to the ***relevant authority***?  
     
   For example: Was written notice of the ***injury*** given to the ***relevant authority*** as soon as reasonably practicable after the ***employee*** died (if not before)? See [Notice of Injury or Accident](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NOILOD), then return to this question.  
     
   If 'yes'—go to the next question.  
   If 'no'—the scheme does not apply in relation to an ***injury*** to an ***employee*** unless there is valid notice (time limits apply).
6. Has a valid claim for compensation been given to the ***relevant authority***?  
     
   See [Claims for Compensation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#CFC), then return to this question.  
     
   If 'yes'—see Table 4 for a summary of entitlements and conditions under the scheme.  
   If 'no'—compensation is not payable to a person under the scheme unless a valid claim for compensation is made by or on behalf of that person.

**Table 4—Summary of Entitlements and Conditions (Injury Resulting in Death)**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=4;up=0#sorted_table) | [**Compensation or benefit**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=4;up=0#sorted_table) | [**How paid or provided**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=4;up=0#sorted_table) | [**Summary of conditions**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=4;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=4;table=4;up=0#sorted_table) |
| --- | --- | --- | --- | --- |
| 4.1 | Death benefit for a ***dependant***wholly dependent for economic support on the ***employee***. | Maximum lump sum amount paid by the ***relevant authority***:   * if there is one ***dependant***—to that ***dependant***; or * if there is more than one ***dependant***—for the benefit of all ***dependants*** who are claiming compensation, in shares, having regard to any losses suffered by those ***dependants*** as a result of the cessation of the ***employee's*** earnings. | This compensation is only payable if there was one or more ***dependants***who were wholly dependent for economic support on the ***employee***at the date of the ***employee's***death. | See [Death Benefit](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#DB).  See [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates) for current maximum lump sum amounts. |
| 4.2 | Death benefit for a ***dependant***partly dependent for economic support on the ***employee***. | Up to the maximum lump sum amount paid by the ***relevant authority***:   * if there is one ***dependant***—to that ***dependant***, having regard to any losses suffered by the ***dependant*** as a result of the cessation of the ***employee's*** earnings; or * if there is more than one ***dependant***—for the benefit of all ***dependants*** who are claiming compensation, in shares, having regard to any losses suffered by those ***dependants*** as a result of the cessation of the ***employee's*** earnings. | This compensation is only payable if (both of the following must be true):   * there were no***dependants***who were wholly dependent for economic support on the ***employee*** at the date of the ***employee's***death; and * there was one or more ***dependants***who were partly dependent for economic support on the ***employee*** at the date of the ***employee's***death. | See [Death Benefit](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#DB).  See [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates) for current maximum lump sum amounts. |
| 4.3 | Dependency payments for a ***prescribed child***. | Maximum weekly compensation amount paid by the ***relevant authority*** to each***prescribed child***. | This compensation is only payable (both of the following apply):   * in a period during which the ***child***is a ***prescribed child***; and * in the case of a ***prescribed child*** who was not wholly or mainly dependent for economic support on the ***employee***at the date of death—in a period during which the ***child***would have been so dependent if the ***employee*** had not died | See [Death Benefit](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#DB).  See [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates) for current maximum weekly compensation amounts. |
| 4.4 | ﻿Paid for or carried out a funeral. | Paid or reimbursed by the ***relevant authority*** to the ***dependant*** who paid the cost of the funeral.  (If another person paid the cost of the funeral, or if a person carried out the funeral and the cost of the funeral has not been paid, see [Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NEC).) | This compensation is only payable up to the maximum compensation amount and if the cost of the funeral is reasonable having regard to both of the following:   * the charges ordinarily made for funerals in the place where the funeral was carried out; and * any amount paid or payable in respect of the cost of the funeral under any other ***law of the Commonwealth***. | See [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates) for current maximum compensation amounts. |

If a claim for compensation has been made and no decision has been made in relation to the claim, see [Investigation and Determination](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IAD).

If a decision has been made in relation to a claim for compensation, and you are not satisfied with the decision, you may have options (subject to time limits). If the decision is:

* a ***determination***, see [Reconsideration](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RECON);
* a ***reviewable decision***, see [Merits Review](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#MR); or
* any other kind of decision, see [Other Forms of Review and Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#OFOR).

If you require independent advice or assistance in relation to a claim for compensation under the scheme, see [Other Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#OTHER).

﻿Accident Not Causing Injury

Compensation may be available under the Comcare Scheme to a person in relation to the supply, replacement or repair of an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by a person (***property used by a person***).

If the person either:

* reasonably obtained or requires such property in relation to an ***injury***, see [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID); or
* had an accident that did not cause injury to the person, but did result in the loss or destruction of, or damage to, such property, keep reading.

The following questions may help you to:

* identify relevant facts;
* assess whether compensation is available under the scheme to a person; and
* identify initial procedural requirements.

These questions are a general guide and the answer to any question should not be relied on in place of independent legal advice.

1. Was the person an ***employee*** at the time of the accident?  
     
   See [Employee and Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#EAE), then return to this question.  
     
   If 'yes'—go to the next question.  
   If 'no'—the person may not be entitled to compensation under the scheme.
2. Did the accident arise out of and in the course of the ***employee's*** employment?  
     
   See [Accident](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#Accident), then return to this question.  
     
   If 'yes'—go to the next question.  
   If 'no'—the person may not be entitled to compensation under the scheme.
3. Did the accident result in the loss or destruction of, or damage to, an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the ***employee*** (***property used by the employee***)?  
     
   If 'yes'—go to the next question.  
   If 'no'—the person may not be entitled to compensation under the scheme.
4. Is the ***relevant authority***prevented from paying any or all compensation?  
     
   For example: Was the loss, destruction or damage attributable to the serious and wilful misconduct of the ***employee***? Has the ***employee*** recovered ***damages*** or other compensation in respect of the loss, destruction or damage? See [Preclusion, Suspension and Repayment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#EPAS), then return to this question.  
     
   If 'yes'—the person may not be entitled to compensation under the scheme.  
   If 'no'—go to the next question.
5. Has notice of the accident been given to the ***relevant authority***?  
     
   For example: Was written notice of the accident given to the ***relevant authority*** as soon as reasonably practicable after the ***employee*** became aware of the accident? See [Notice of Injury or Accident](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NOILOD), then return to this question.  
     
   If 'yes'—go to the next question.  
   If 'no'—the scheme does not apply in relation to the loss or destruction of, or damage to, ***property used by the employee*** unless there is valid notice (time limits apply).
6. Has a valid claim for compensation been given to the ***relevant authority***?  
     
   See [Claims for Compensation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#CFC), then return to this question.  
     
   If 'yes'—see Table 5 for a summary of entitlements and conditions under the scheme.  
   If 'no'—compensation is not payable to a person under the scheme unless a valid claim for compensation is made by or on behalf of that person.

**Table 5—Summary of Entitlements and Conditions (Accident Not Causing Injury)**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=5;up=0#sorted_table) | [**Compensation or benefit**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=5;up=0#sorted_table) | [**How paid or provided**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=5;up=0#sorted_table) | [**Summary of conditions**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=5;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=4;table=5;up=0#sorted_table) |
| --- | --- | --- | --- | --- |
| 5.1 | Compensation for either:   * replacement cost; or * repair cost,   of ***property used by an employee***. | Paid by the ***relevant authority*** to the ***employee***. | This compensation is only payable if the expense was reasonably incurred by the ***employee***in the necessary:   * repair of the property; or * replacement of the property,  which is taken to include any fees or charges paid or payable by the ***employee*** to any of the following: * a legally qualified medical practitioner; * a legally qualified dentist; or * another qualified person,  for a consultation, examination, prescription or other service reasonably rendered in connection with the replacement or repair. | ***SRC Act***: section 15. |

If a claim for compensation has been made and no decision has been made in relation to the claim, see [Investigation and Determination](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IAD).

If a decision has been made in relation to a claim for compensation, and you are not satisfied with the decision, you may have options (subject to time limits). If the decision is:

* a ***determination***, see [Reconsideration](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RECON);
* a ***reviewable decision***, see [Merits Review](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#MR); or
* any other kind of decision, see [Other Forms of Review and Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#OFOR).

If you require independent advice or assistance in relation to a claim for compensation under the scheme, see [Other Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#OTHER).

﻿Non-Employee/Dependant Claims

A person may be entitled to payment or reimbursement under the Comcare Scheme if they either provided a service, or incurred an expense, in connection with an ***employee*** who has suffered an ***injury***. Table 6 contains a summary of entitlements and conditions under the scheme.

**Table 6—Summary of Entitlements and Conditions (Non-Employee/Dependant Claims)**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=6;up=0#sorted_table) | [**Service or expense**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=6;up=0#sorted_table) | [**How paid or provided**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=6;up=0#sorted_table) | [**Summary of conditions**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=6;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=4;table=6;up=0#sorted_table) |
| --- | --- | --- | --- | --- |
| 6.1 | A person provided, or paid the cost of, ***medical treatment*** (including the supply, replacement or repair of ***property used by the employee***). | Paid or reimbursed by the ***relevant authority*** to:   * if a person (other than the ***employee***) paid the cost and the ***employee*** has not died—that person; * if a person (other than the ***employee*** or the ***employee's*** legal personal representative) paid the cost and the ***employee*** has died—that person; or * if the cost has not been paid—the person to whom the cost is payable. | This compensation is only payable if (both of the following must be true):   * the ***medical treatment*** is compensable under the Comcare Scheme; and * the cost of the treatment has not already been paid by the ***relevant authority***. | See [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID), to assess whether the ***medical treatment*** is compensable under the Comcare Scheme. |
| 6.2 | A person incurred an expense transporting the ***employee***. | Paid or reimbursed by the ***relevant authority*** to the person. | This compensation is only payable if the person reasonably incurred expenditure in connection with the transportation of the ***employee*** from the place where the ***injury*** was sustained to either:   * a hospital or similar place; or * if the ***employee*** has died—a hospital or similar place, or a mortuary,   and the ***employee*** or their legal personal representative must not have already made a claim for compensation in respect of that expenditure. | See Note 1 for when an ***employee*** has died.  See [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID), to assess whether the ***employee*** suffered an ***injury*** in respect of which compensation is payable. |
| 6.3 | A person provided:   * ***household services***; or * ***attendant care services*** | Paid or reimbursed by the ***relevant authority*** to the person. | This compensation is only payable if either:   * the ***household services*** are compensable under the Comcare Scheme, subject to the maximum weekly compensation amount; or * the ***attendant care services*** are compensable under the Comcare Scheme, subject to the maximum weekly compensation amount,   and the ***employee*** must not have already paid for the services. | See [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID), to assess whether the ***household services*** or ***attendant care services*** are compensable under the Comcare Scheme.  See [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates) for current compensation rates. |
| 6.4 | A person provided one of the following services:   * alteration of the ***employee's place of residence*** or ***place of work***; * modifications of a vehicle or article used by the ***employee***; or * the supply, replacement or repair of aids or appliances for the use of the ***employee***. | Paid or reimbursed by the ***relevant authority*** to:   * if a person (other than the ***employee*** or the ***employee's*** legal personal representative) paid the cost and the ***employee*** has died—that person; or * if the ***employee***, or the ***employee's*** legal personal representative, is unable, or refuses or fails, to make a claim for the compensation—the person to whom the cost of the service is payable. | This compensation is only payable if (both of the following must be true):   * the relevant service is compensable under the Comcare Scheme; and * the cost of the service has not already been paid by the ***relevant authority***. | See [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID), to assess whether the alterations, modifications, aids or appliances are compensable under the Comcare Scheme. |
| 6.5 | A person paid for or carried out a funeral. | Paid or reimbursed by the ***relevant authority*** to:   * if the person paid the cost of the funeral—that person; or * if the person carried out the funeral and the cost of the funeral has not been paid—that person. | This compensation is only payable:   * if the ***injury*** resulting in death is compensable under the Comcare Scheme; and * up to the maximum compensation amount,   and if the cost of the funeral is reasonable having regard to both of the following:   * the charges ordinarily made for funerals in the place where the funeral was carried out; and * any amount paid or payable in respect of the cost of the funeral under any other ***law of the Commonwealth***. | See [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID), to assess whether the ***injury*** resulting in death is compensable under the Comcare Scheme.  See [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates) for current maximum compensation amounts. |
| **Note 1:** If the ***employee*** has died, it is not necessary for the ***injury*** to have resulted in the death of the ***employee*** for this compensation to be payable under the Comcare Scheme. | | | | |

If a claim for compensation has been made and no decision has been made in relation to the claim, see [Investigation and Determination](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IAD).

If a decision has been made in relation to a claim for compensation, and you are not satisfied with the decision, you may have options (subject to time limits). If the decision is:

* a ***determination***, see [Reconsideration](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RECON);
* a ***reviewable decision***, see [Merits Review](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#MR); or
* any other kind of decision, see [Other Forms of Review and Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#OFOR).

If you require independent advice or assistance in relation to a claim for compensation under the scheme, see [Other Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#OTHER).

﻿Employee and Employment

This section contains a summary of provisions relating to ***employees*** and employment covered by the Comcare Scheme. The following information may help you answer these questions:

*Was the person an****employee****at the relevant time?  
Was the deceased person an****employee****at the relevant time?*

Who is an Employee?

The term ***employee*** means a person of any age who satisfies the criteria in one of the rows in Table 7.

**Table 7—Summary of Employee Provisions**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=7;up=0#sorted_table) | [**Employed by**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=7;up=0#sorted_table) | [**Summary of conditions**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=7;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=7;up=0#sorted_table) |
| --- | --- | --- | --- |
| 7.1 | A person employed by the ***ACT***. | A person is an ***employee*** of the ***ACT***, the Commonwealth or a ***Commonwealth authority*** if either:   * the person is employed under one of the following:   + a ***law of the Commonwealth***;   + a law of a Territory;   + a contract of service (as distinct from a contract for service);   + an apprenticeship; or * the person is deemed to be an ***employee*** of the ***ACT***, the Commonwealth or a ***Commonwealth authority***. | See Note 1 for employment by a ***licensed corporation***.  See [Scheme Employers](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#LOCSE), including for details and examples of employment by:   * the ***ACT***; * the Commonwealth; * a ***Commonwealth authority*** (including a ***licensed authority***); and * a ***licensed corporation***.   See [Deemed Employees](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#DE), for persons who are deemed to be, or not to be, an employee under the Comcare Scheme. |
| 7.2 | A person employed by the Commonwealth other than a person who is declared not to be an employee of the Commonwealth. |
| 7.3 | A person employed by a ***Commonwealth authority*** (including a ***licensed authority***) other than a person who is declared not to be an employee of a ***Commonwealth authority***. |
| 7.4 | A person employed by a ***licensed corporation***. | A person is an ***employee*** of a ***licensed corporation*** if either:   * the person performs work for a ***licensed corporation*** under either:   + a law; or   + a contract,  and pursuant to that law, or pursuant to the law that is the proper law of that contract, the person would, if that corporation were not a ***licensed corporation***, be entitled to compensation in respect of any of the following:   + injury, loss or damage suffered by the person in connection with that work; or   + the death of the person in connection with that work; or * the person is deemed to be an ***employee*** of a ***licensed corporation***. |
| **Note 1:** In relation to employment by a ***licensed corporation***, the person does not need to prove an entitlement to workers’ compensation under a relevant law of a State or Territory for the claimed injury, loss, damage or death. Rather, the ***relevant authority*** need only be satisfied that the person would be entitled to compensation in respect of injury, loss or damage suffered by, or in respect of the death of, the person in connection with that work, if the corporation were not a ***licensed corporation***. | | | |

Employment at the Relevant Time

The relevant time for assessing whether a person's employment is covered by the Comcare Scheme is:

* if an injury was sustained in the course of the person's employment—the employment at time the injury was sustained;
* if an injury was caused or contributed to by the person's employment—the employment at the time of incident or state of affairs that caused or contributed to the injury; or
* in the case of loss or destruction of, or damage to, ***property used by the person***—the employment at the time of the accident.

Consider if there was a connection between what the person was doing at the relevant time and the person's employment? For example, was the person performing a duty or function of their employment? Or is there a deemed connection between what the person was doing at the relevant time and the person's employment?

For more information about deemed connections with employment after 30/11/1988, see [Rules for Ailments](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RFAD), [Rules for Injuries](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RFAI) and [Deemed Employees](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#DE).

It is not necessary for the person to continue to be employed in that employment in order to make a claim for compensation under the scheme. However, some entitlements may be affected by a person's employment status, current employer, actual earnings and earning capacity. For more information, see [Incapacity for Work](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IFW).

Once the ***relevant authority*** has incurred a liability under the scheme in relation to a person who was an ***employee***, a reference to an 'employee' in the ***SRC Act*** is generally taken to include a reference to a person who has ceased to be an ***employee***.

[ [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID) | [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID) | [Accident Not Causing Injury](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ANCI) | [Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NEC) ]

﻿Ailment, Injury and Aggravation

This section contains a summary of provisions relating to an ***injury*** under the Comcare Scheme. The following information may help you answer these questions:

*Did the****employee****suffer an****injury****?  
Did the deceased****employee****suffer an****injury****resulting in death?*

﻿What is a Compensable Injury?

For the purposes of the Comcare Scheme, the term ***injury***has a specific meaning. It means an ***ailment***, or an injury in the primary sense, that is related to employment in a specific way. The relevant legal test for that relationship depends on how and when the ***ailment*** or injury was suffered.

For example, the term ***injury*** may be any of the following:

* an ***ailment*** (or the ***aggravation*** of an ***ailment***) suffered by an ***employee***, depending on the degree of contribution to that ***ailment*** or ***aggravation*** from the ***employee's*** employment;
* an injury in the primary sense suffered by an ***employee*** (or the ***aggravation*** of such an injury) that arose out of, or in the course of, the ***employee's*** employment; or
* an injury in the primary sense (but not the ***aggravation*** of such an injury) that results from ***medical treatment*** of an earlier ***injury***, subject to certain conditions.

What is an Ailment?

The term ***ailment*** means any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development).

A formal diagnosis is not usually required. However, it is necessary to establish that, having regard to the ***employee's*** circumstances, the ***employee*** is in a condition that is outside the boundaries of normal mental functioning and behavior.

An ***ailment*** will generally include a disease in the ordinary sense. In some cases, an ***ailment*** can also be an injury in the primary sense.

What is an Injury in the Primary Sense?

An injury in the primary sense is a change or disturbance in the normal functioning of a person (a physiological change or disturbance). The change or disturbance, and the cause of that change or disturbance, may be internal or external to the body of a person.

The change may be sudden, or even dramatic, but does not have to be. Suddenness, however, may help distinguish a physiological change from the natural progress of an underlying disease.

When assessing whether a person has suffered an injury in the primary sense, the most important thing to consider is the nature and incidents of the physiological change. In other words, you should consider the character of the change and what caused it.

An injury in the primary sense may include a disturbance of the normal psychological or psychiatric state. That is, the injury may be physical or mental.

What is an Aggravation?

An ***aggravation*** of an earlier ***ailment***, or injury in the primary sense, can be temporary or permanent.

For an ***aggravation*** to be considered an ***injury***, the signs or symptoms of the earlier ***ailment*** or injury will usually be made worse in some measurable way. Generally:

* signs are the objective indications of an ***ailment***or injury, which may or may not be noticed by a person; and
* symptoms are the subjective indications of an ***ailment*** or injury of which a person is usually aware.

It can be difficult to assess if there has been an aggravation, acceleration or recurrence of an earlier ***ailment*** or injury. The opinion of a medical or other relevant expert may be required. In some cases, the ***aggravation*** may be identified or measured by the effect it has on any of the following:

* the nature or extent of any ***medical treatment***in relation to the earlier ***ailment*** or injury;
* the nature or extent of any ***incapacity for work*** or ***impairment*** resulting from the earlier ***ailment*** or injury; or
* the timing of death as a result of the earlier ***ailment*** or injury.

For information about deeming provisions in relation to the ***aggravation*** of ***ailments***, see [Rules for Ailments](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RFAD).

﻿When is an Ailment, Injury or Aggravation Suffered?

Assessing Liability and Entitlements

An ***ailment*** that develops gradually (such as an asbestos-related disease) may be suffered long after the ***employee*** experienced the incident or state of affairs necessary for the development of the ***ailment*** (for example, inhalation of asbestos fibres in the course of employment). It is therefore possible for employment to occur before the Comcare Scheme commenced on 01/12/1988 and for the ***ailment*** (or the ***aggravation*** of an ***ailment***) to be suffered as a result of that employment some time after 01/12/1988.

If an injury in the primary sense (or the ***aggravation*** of such an injury) is suffered as a direct result of an incident or accident, the injury or ***aggravation*** is often suffered at the time the incident or accident occurred.

Assessing when an ***ailment***, injury or ***aggravation*** was suffered can be more difficult if either:

* the ***ailment***, injury or ***aggravation*** is suffered as a result of multiple incidents or a state of affairs
* the ***ailment*** or injury is suffered as a consequence of, or secondary to, an earlier ***injury.***

In these cases, the ***ailment***, injury or ***aggravation*** may be suffered when it was first noticed by the ***employee*** or by someone else, or when it was first diagnosed or treated. The opinion of a medical or other relevant expert may be required to help in these cases.

If a claimed injury (however described) was suffered:

* before 01/12/1988, see [Injured before 01/12/1988](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ISB1988), this section; or
* after 30/11/1988, see [Injured after 30/11/1988](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ISA1988), this section.

Assessing Entitlements Only (Ailments)

For the purposes of assessing entitlements under the Comcare Scheme in relation to an ***ailment*** (or the ***aggravation*** of an ***ailment***) that was suffered after 30/11/1988 and satisfies the definition of ***injury***—the ***ailment*** or ***aggravation*** is taken to have been sustained on the earliest of the following days:

* when the ***employee*** first sought ***medical treatment*** for the ***ailment*** or ***aggravation***;
* when the ***ailment*** or ***aggravation*** first resulted in the ***incapacity for work*** or ***impairment***of the ***employee***; or
* when the ***ailment*** or ***aggravation*** resulted in the death of the ***employee***.

Injured before 01/12/1988

If an injury or a disease was suffered before 01/12/1988, compensation may still payable under the Comcare Scheme if compensation was, or would have been, payable under earlier Commonwealth workers’ compensation legislation.

To assess whether Commonwealth workers’ compensation was, or would have been, payable before 01/12/1988, the injury or disease must satisfy the relevant definitions and conditions in the legislation in Table 8, as amended and in force when the injury or disease was suffered:

**Table 8—Relevant Legislation if Injured before 01/12/1988**

| [**If suffered in the period**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=8;up=0#sorted_table) | [**The relevant definitions and conditions are in the**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=8;up=0#sorted_table) |
| --- | --- |
| 01/09/1971 to 30/11/1988 (inclusive) | Compensation (Commonwealth Government Employees) Act 1971 (Cth) (***1971 Act***) |
| 10/11/1930 to 31/08/1971 (inclusive) | [Commonwealth Employees’ Compensation Act 1930](http://www.austlii.edu.au/au/legis/cth/num_act/ceca193024o1930435/index.html) (Cth) (***1930 Act***) |
| 05/02/1913 to 09/11/1930 (inclusive) | [Commonwealth Workmen’s Compensation Act 1912](http://www.austlii.edu.au/au/legis/cth/num_act/cwca191229o1912439/index.html) (Cth) (***1912 Act***) |

If Commonwealth workers’ compensation was, or would have been, payable before 01/12/1988, the injury or disease is taken to be an ***injury***in respect of which compensation is payable under the Comcare Scheme.

However, some entitlements have been modified, as summarised in Table 9.

**Table 9—Summary of Transitional Provisions**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=9;up=0#sorted_table) | [**Event**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=9;up=0#sorted_table) | [**Entitlements under earlier Acts**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=9;up=0#sorted_table) | [**Entitlements under the Comcare Scheme**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=9;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=4;table=9;up=0#sorted_table) |
| --- | --- | --- | --- | --- |
| 9.1 | ***Permanent impairment***or death occurring before 01/12/1988. | A person received, or was not entitled to receive, lump sum compensation for that ***impairment*** or death under the ***1912 Act***, the ***1930 Act*** or the ***1971 Act***, whichever applied. | The person is not entitled to lump sum compensation for that ***impairment*** or death under the Comcare Scheme. | ***SRC Act***: subsection 124(3). |
| 9.2 | A person did not receive, but would have been entitled to receive, lump sum compensation for that ***impairment*** or death under the ***1912 Act***, the ***1930 Act*** or the ***1971 Act***, whichever applied. | If the person is entitled to lump sum compensation for that ***impairment*** or death under the Comcare Scheme—the amount of compensation is the same as the amount that would have been payable under the ***1912 Act***, the ***1930 Act*** or the ***1971 Act***, whichever applied. | ***SRC Act***: subsection 124(4). |
| 9.3 | Death or ***incapacity for work*** occurring before 01/12/1988. | A person received, or was not entitled to receive, weekly payments in relation to that death or incapacity under the ***1912 Act***, the ***1930 Act*** or the ***1971 Act***, whichever applied. | The person is not entitled to weekly payments in relation to that death or incapacity under the Comcare Scheme. | ***SRC Act***: subsection 124(6). |
| 9.4 | A person did not receive, but would have been entitled to receive, weekly payments in relation to that death or incapacity under the ***1912 Act***, the ***1930 Act*** or the ***1971 Act***, whichever applied. | If the person is entitled to weekly payments in relation to that death or incapacity under the Comcare Scheme—the rate of compensation is the same as the rate that would have been payable under the ***1912 Act***, the ***1930 Act*** or the ***1971 Act***, whichever applied. | ***SRC Act***: subsection 124(7). |
| 9.5 | ***Medical treatment***expense or funeral expense paid or payable before 01/12/1988. | An amount of compensation was paid, or was not payable, in respect of such an expense under the ***1912 Act***, the ***1930 Act*** or the ***1971 Act***, whichever applied. | An amount of compensation in respect of that expense is not payable under the Comcare Scheme. | ***SRC Act***: subsection 124(8). |
| 9.6 | An amount of compensation was not paid, but would have been payable, in respect of such an expense under the ***1912 Act***, the ***1930 Act*** or the ***1971 Act***, whichever applied. | If an amount of compensation is payable in respect of such an expense under the Comcare Scheme—the amount of compensation is the same as the amount that would have been payable under the ***1912 Act***, the ***1930 Act*** or the ***1971 Act***, whichever applied. | ***SRC Act***: subsection 124(9). |
| 9.7 | ***Household services*** or ***attendant care service*** provided before 01/12/1988. |  | A person is not entitled to compensation for any such services provided before 01/12/1988 under the Comcare Scheme. | ***SRC Act***: subsection 124(5). |

Injured after 30/11/1988

The following questions may help you assess whether an ***employee*** has suffered an ***injury*** under the Comcare Scheme.

These questions are a general guide and the answer to any question should not be relied on in place of independent legal advice.

1. Does the ***employee*** suffer something that can be described as a physical or mental ailment, disorder, defect or morbid condition disorder, defect or condition (whether of sudden onset or gradual development)?  
     
   If 'yes', the ***employee*** may suffer an ***ailment***—go to the next question.  
   If 'no'—go to Question 3.
2. Was the ***ailment***(or the ***aggravation*** of that ***ailment***) contributed to, to a ***material degree*** (if suffered before 13/04/2007) or to a ***significant degree*** (if suffered after 12/04/2007), by the ***employee’s***employment (with or without the benefit of any applicable deeming provisions)?  
     
   For a summary of deeming provisions, see [Rules for Ailments](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RFAD), this section, then return to this question.  
     
   If 'yes', the ***employee*** may suffer a ***disease***—go to Question 5.  
   If 'no'—go to the next question.
3. Does the ***employee***suffer something that can be described as a physical or mental injury in the primary sense?  
     
   If 'yes'—go to the next question.  
   If 'no'**,**the ***employee*** may not suffer a compensable injury under the scheme.
4. Did the injury (or the***aggravation***of that injury) arise out of, or in the course of, the ***employee’s***employment (with or without the benefit of any applicable deeming provisions)?  
     
   For a summary of deeming provisions, see [Rules for Injuries](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RFAI), this section, then return to this question.  
     
   If 'yes'—go to Question 5.  
   If 'no'—go to Question 6.
5. Is the ***disease***, injury or ***aggravation***, excluded from the definition of ***injury***?  
     
   See [What is not a Compensable Injury?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#EFTDOI), this section, then return to this question.  
     
   If 'yes'**,**the ***employee*** may not suffer a compensable injury under the scheme.  
   If 'no'**,**the ***employee*** may suffer an ***injury*** in respect of which compensation is payable under the scheme.
6. Was the ***ailment*** or injury suffered as a result of ***medical treatment*** of an earlier ***injury*** (that is, in circumstances where compensation was payable under the scheme in respect of both the ***medical treatment*** and the earlier ***injury***)?  
     
   If 'yes', the ***employee*** may suffer an ***injury*** in respect of which compensation is payable under the scheme.  
   If 'no'—go to Question 7.
7. Did the ***ailment*** or injury arise as a consequence of, or secondary to, an earlier ***injury*** (that is, in circumstances where compensation was payable under the scheme in respect of the earlier ***injury***) such that the answer to Questions 2 or 4 (whichever is relevant) may be answered 'yes'?  
     
   If 'yes', the ***employee*** may suffer an ***injury*** in respect of which compensation is payable under the scheme.  
   If 'no'**,**the ***employee*** may not suffer a compensable injury under the scheme.

If you require independent advice or assistance in relation to a claim for compensation under the scheme, see [Other Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#OTHER).

Rules for Ailments

The following information applies to an ***ailment*** (or the ***aggravation*** of an ***ailment***) suffered by an ***employee*** after 30/11/1988. The following may help you answer the question:

*Was the****ailment****(or the****aggravation****of that****ailment****) contributed to, to a****material degree****(if suffered before 13/04/2007) or to a****significant degree****(if suffered after 12/04/2007), by the****employee’s****employment (with or without the benefit of any applicable deeming provisions)?*

An opinion from a medical or other relevant expert may be required to help you answer this question.

﻿Material Degree

The degree of contribution required for ***ailments*** and ***aggravations*** suffered before 13/04/2007 is ***material degree***. To help you identify when an ***ailment*** or ***aggravation*** is suffered, see [When is an Ailment, Injury or Aggravation Suffered?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#WIAIODS).

An ***ailment*** or ***aggravation*** is likely to be contributed to, to a ***material degree***, by an ***employee's*** employment if it can be established that:

* it is probable (more likely than not) that the ***employee's*** employment made a material, considerable or substantial contribution to the causation, aggravation, acceleration or recurrence of the ***ailment***; or
* the causal connection between the ***employee's*** employment and the ***ailment*** or ***aggravation*** is unbroken, whether or not that connection is direct or indirect.

If it is claimed that the ***employee's*** perception of a work-related incident or state of affairs contributed to the ***ailment*** or ***aggravation***, there is no requirement that the ***employee's*** interpretation or perception of that incident or state of affairs be reasonable. However, it will be necessary to establish that the incident or state of affairs actually occurred and created the perception in the mind of the ***employee***.

The ***employee's*** employment does not need to be the only, or the most significant, cause or contributing factor. However, the degree of contribution must be material in light of all relevant contributing factors. You should therefore consider both employment and non-employment factors when assessing the degree of contribution from employment.

Significant Degree

The degree of contribution required for ***ailments*** and ***aggravations*** suffered after 12/04/2007 is ***significant degree***. To help you identify when an ***ailment*** or ***aggravation*** is suffered, see [When is an Ailment, Injury or Aggravation Suffered?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#WIAIODS).

The term ***significant degree*** means a degree that is substantially more than material. For what is meant by ***material degree***, see [Material Degree](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#MDEGREE).

To assess whether an ***ailment*** or ***aggravation*** was contributed to, to a ***significant degree***, by an ***employee's*** employment, the following matters may be taken into account by the ***relevant authority*** (this is not an exhaustive list):

* the duration of the employment;
* the nature of, and particular tasks involved in, the employment;
* any predisposition of the ***employee*** to the ***ailment***;
* any predisposition of the ***employee*** to the ***aggravation*** of the ***ailment***;
* any activities of the ***employee*** not related to the employment; and
* any other matters affecting the ***employee’s*** health.

If it is claimed that the ***employee's*** perception of a work-related incident or state of affairs contributed to the ***ailment*** or ***aggravation***, there is no requirement that the ***employee's*** interpretation or perception of that incident or state of affairs be reasonable. However, it will be necessary to establish that the incident or state of affairs actually occurred and created the perception in the mind of the ***employee***.

The ***employee's*** employment does not need to be the only, or the most significant, cause or contributing factor. However, the degree of contribution must be substantially more than material in light of all relevant contributing factors. You should therefore consider both employment and non-employment factors when assessing the degree of contribution from employment.

Deeming Provisions (Ailments)

Table 10 contains a summary of the contribution tests and deeming provisions that apply to an ***ailment*** (or in some cases the ***aggravation*** of an ***ailment***) suffered after 30/11/1988.

**Table 10—Summary of Deeming Provisions (Ailments)**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=10;up=0#sorted_table) | [**Date suffered**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=10;up=0#sorted_table) | [**Contribution test**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=10;up=0#sorted_table) | [**Deeming provisions**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=10;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=4;table=10;up=0#sorted_table) |
| --- | --- | --- | --- | --- |
| 10.1 | Suffered after 30/11/1988 and before 13/04/2007. | Was the ***ailment*** (or the ***aggravation*** of the ***ailment***) contributed to, to a ***material degree***, by the ***employee's*** employment?  (Includes firefighters.) | The ***employee's*** employment is taken to have contributed, to a ***material degree***, to the contraction of an ***ailment*** if either:   * both of the following are true:   + the ***ailment*** is of a kind specified in a notice as an ***ailment*** related to employment of a kind specified in that notice; and   + the ***employee*** was, at any time before symptoms of the ***ailment*** first became apparent, engaged in employment of that kind; or * both of the following are true:   + the ***employee*** was, at any time before symptoms of the ***ailment*** first became apparent, engaged in employment; and   + the incidence of the ***ailment*** (or the ***aggravation*** of the ***ailment***) among persons who have engaged in such employment is significantly greater than the incidence of the ***ailment*** (or the ***aggravation*** of the ***ailment***) among persons who have engaged in other employment in the place where the ***employee*** is ordinarily employed,   unless the ***relevant authority*** establishes that the ***employee's*** employment probably did not contribute, to a ***material degree***, to the contraction of the ***ailment*** or ***aggravation***. | See Note 1 for use of the term ***ailment***in the summary of this deeming provision.  See Notice of Declarations and Specifications (made on 28/11/1988, published in [Gazette S365](https://www.legislation.gov.au/file/1988GN46) on 30/11/1988, and amended by Notice No 1 of 1989, published in in [Gazette GN 32](https://www.legislation.gov.au/file/1989GN32) on 23/08/1989), to assess whether the ***ailment*** is of a kind specified in a notice as an ***ailment*** related to employment of a kind specified in that notice.  ***SRC Act***: subsections 7(1) and (2). |
| 10.2 | Suffered after 12/04/2007. | Was the ***ailment*** (or the ***aggravation*** of the ***ailment***) contributed to, to a ***significant degree***, by the ***employee's*** employment?  (Includes firefighters.) | The ***employee's*** employment is taken to have contributed, to a ***significant degree***, to the contraction of an ***ailment*** if either:   * both of the following are true:   + the ***ailment*** is of a kind specified in a legislative instrument as an ***ailment*** related to employment of a kind specified in that instrument; and   + the ***employee*** was, at any time before symptoms of the ***ailment*** first became apparent, engaged in employment of that kind; or * both of the following are true:   + the ***employee*** was, at any time before symptoms of the ***ailment*** first became apparent, engaged in employment; and   + the incidence of the ***ailment*** (or the ***aggravation*** of the ***ailment***) among persons who have engaged in such employment is significantly greater than the incidence of the ***ailment*** (or the ***aggravation*** of the ***ailment***) among persons who have engaged in other employment in the place where the ***employee*** is ordinarily employed,   unless the ***relevant authority*** establishes that the ***employee's*** employment probably did not contribute, to a ***significant degree***, to the contraction of the ***ailment*** or ***aggravation*** . | See Note 1 for use of the term ***ailment***in the summary of this deeming provision.  See one of the following to assess whether the ***ailment*** is of a kind specified in a legislative instrument as an ***ailment*** related to employment of a kind specified in that instrument:   * [Safety, Rehabilitation and Compensation (Specified Diseases) Notice 2007 (1)](https://www.legislation.gov.au/Details/F2007L01983) for an ***ailment*** or ***aggravation*** suffered after 12/04/2007 and before 01/10/2017; or * [Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017](https://www.legislation.gov.au/Series/F2017L01318) for an ***ailment*** or ***aggravation*** suffered after 30/09/2017.   ***SRC Act***: subsections 7(1) and (2). |
| 10.3 | Suffered after 03/11/2011. | Was the ***ailment*** (or the ***aggravation*** of the ***ailment***) contributed to, to a ***significant degree***, by the ***employee's*** employment?  (Firefighters only.) | The ***employee's*** employment is taken to have contributed, to a ***significant degree***, to the contraction of an ***ailment*** if all of the following are true:   * the ***ailment*** is specified in the ***SRC Act***; * before the ***ailment*** was sustained, the ***employee***was employed as a firefighter for the qualifying period specified in the ***SRC Act*** for that ***ailment***; and * the employee was exposed to the hazards of a fire scene during that period,   unless the ***relevant authority*** establishes that the ***employee's*** employment probably did not contribute, to a ***significant degree***, to the contraction of the ***ailment***. | See the following:   * Note 1 for use of the term ***ailment***in the summary of this deeming provision; and * Note 2 for when an ***employee***is taken to be employed as a firefighter for the qualifying period.   ***SRC Act***: subsection 7(8) (for specified ***ailments*** and qualifying periods), (9) and (10). |
| 10.4 | Suffered after 30/11/1988. | Did the ***injury*** to the ***employee*** result in ***incapacity for work*** or ***impairment***?  (For ***disease*** only.) | ***Incapacity for work*** or ***impairment*** is taken to have resulted from an ***ailment*** (or the ***aggravation*** of an ***ailment***) if, but for that ***ailment*** (or that ***aggravation***), any of the following are true:   * the ***incapacity for work***or ***impairment***would not have occurred; * the ***incapacity for work***or ***impairment***would have commenced at a significantly later time; or * the extent of the ***incapacity for work***or ***impairment***would have been significantly less. | See Note 1 for use of the term ***ailment***in the summary of this deeming provision. |
| 10.5 | Suffered after 30/11/1988. | Did the ***injury*** to the ***employee*** result in death?  (For ***disease*** only.) | The death of an *employee* is taken to have resulted from an ***ailment*** (or the ***aggravation*** of an ***ailment***) if, but for that ***ailment*** (or that ***aggravation***), the *employee*would have died at a significantly later time. | See Note 1 for use of the term ***ailment***in the summary of this deeming provision.  ***SRC Act***: subsection 7(5). |
| **Note 1:** The deeming provisions in section 7 of the ***SRC Act***, and instruments made under that section, use the term 'disease' in its ordinary sense. However, the defined term ***disease*** only refers to an ***ailment*** and the ***aggravation*** of an ***ailment***. The ordinary meaning of disease and the defined meaning of ***ailment*** are substantially similar. In most cases, a disease will also be an ***ailment***. For these reasons, this table uses the term ***ailment*** when summarising the deeming provisions in section 7. | | | | |
| **Note 2:** An ***employee***is taken to have been employed:   * as a firefighter—if firefighting duties made up a substantial portion of their duties, and only if they were actually employed as a firefighter and not deemed to be employed as a firefighter; and * for the qualifying period—if they were employed as a firefighter for 2 or more periods that add up to the qualifying period. | | | | |

﻿Rules for Injuries

The following information applies to an injury in the primary sense (or the ***aggravation*** of such an injury) suffered by an ***employee*** after 30/11/1988. The following may help you answer the question:

*Did the injury (or the****aggravation****of that injury) arise out of, or in the course of, the****employee’s****employment (with or without the benefit of any applicable deeming provisions)?*

An opinion from a medical or other relevant expert may be required to help you answer this question.

Arising Out of, or in the Course of, Employment

The term 'arising out of employment' requires a causal connection with employment. That is, it must be probable (more likely than not) that the ***employee's*** employment caused or materially contributed to the injury or ***aggravation***.

The ***employee's*** employment does not need to be the only, or the most significant, cause or contributing factor. However, the contribution must be material in light of all relevant contributing factors. You should therefore consider both employment and non-employment factors when assessing the contribution from employment.

The term 'arising in the course of employment' requires a temporal connection with employment. That is, it must be probable (more likely than not) that the employment and the injury or ***aggravation*** occurred at the same time.

An injury or ***aggravation***may arise both out of **and** in the course of the ***employee’s***employment, but this is not a requirement.

Interval or Interlude in Employment

An ***employee*** may still be ‘in the course of employment’ during an interval or interlude in a single period of employment (as distinct from the break between two periods of employment).

Take for example an ***employee*** on an overnight work trip where the whole trip is taken to be one period of employment. The interval or interlude may be the period between the end of work on day one and the start of work on day two.

The arising ‘in the course of employment’ test may be satisfied if the ***employee's*** employer (expressly or impliedly) induces or encourages the ***employee*** either:

* to be at a place during the interval or interlude in employment and the ***employee*** suffers an injury or ***aggravation*** at and by reference to that place (that is, the place in some way caused the injury or ***aggravation***); or
* to engage in an activity (whether or not the employer induced or encouraged the ***employee*** to be present at a place) during the interval or interlude in employment and the ***employee*** suffers an injury or ***aggravation*** whilst engaged in that activity.

Deeming Provisions (Injuries)

In considering whether an injury (but not the***aggravation***of that injury) arose out of, or in the course of, the ***employee’s***employment, consider whether any relevant deeming provisions apply.

The following is a summary of deeming provisions, which add to and do not limit the circumstances in which an injury may have arisen out of, or in the course of, employment.

An injury may be taken to have arisen out of, or in the course of, the ***employee's*** employment if it satisfies the criteria in one of the rows in Table 11.

**Table 11—Summary of Deeming Provisions (Injuries)**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=11;up=0#sorted_table) | [**Date suffered**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=11;up=0#sorted_table) | [**Deeming provisions**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=11;up=0#sorted_table) | [**Exceptions to deeming**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=11;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=4;table=11;up=0#sorted_table) |
| --- | --- | --- | --- | --- |
| 11.1 | Suffered after 30/11/1988. | The injury was 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. | No exceptions. | ***SRC Act***: paragraph 6(1)(a). |
| 11.2 | Suffered after 30/11/1988. | The injury was sustained while the ***employee*** was at the ***employee’s place of work***, for the purposes of their employment | This deeming provision does not apply if the injury was sustained because the ***employee*** voluntarily and unreasonably submitted to an abnormal risk of injury. | ***SRC Act***: paragraph 6(1)(b). |
| 11.3 | Suffered either:   * after 30/11/1988 and before 13/04/2007; or * after 06/12/2011. | The injury was sustained while the ***employee*** was temporarily absent from their ***place of work*** during an ordinary recess in their employment. | This deeming provision does not apply if the injury was sustained because the ***employee*** voluntarily and unreasonably submitted to an abnormal risk of injury. | ***SRC Act***: paragraph 6(1)(b). |
| 11.4 | Suffered after 30/11/1988. | The injury was sustained while the ***employee*** was temporarily absent from their ***place of work*** undertaking an activity (either of the following):   * associated with their employment; or * at the direction or request of their employer. | No exceptions. | ***SRC Act***: paragraph 6(1)(c). |
| 11.5 | Suffered after 06/12/2011. | The injury was sustained while the ***employee*** was, at the direction or request of their employer (either of the following):   * at a declared place outside Australia and the external Territories (this is intended to cover areas which are ‘significantly dangerous and have a higher risk of injury’ and currently includes Iraq and Afghanistan since 16/08/2013); or * at a place outside Australia and the external Territories and a member of a declared class of employees (currently includes persons engaged under the [Australian Civilian Corps Act 2011](http://www.austlii.edu.au/au/legis/cth/consol_act/acca2011264/index.html) (Cth) since 22/12/2011). | This deeming provision does not apply if the injury was sustained because the ***employee*** voluntarily and unreasonably submitted to an abnormal risk of injury. | ***SRC Act***: paragraph 6(1)(h). |
| 11.6 | Suffered after 30/11/1988. | The injury was sustained while the ***employee*** was at a place of education (except while on leave without pay) in accordance with (any of the following):   * a condition of the ***employee’s***employment; * a request or direction of the ***employee's*** employer; or * the approval of the ***employee's*** employer. | This deeming provision does not apply if the injury was sustained because the ***employee*** voluntarily and unreasonably submitted to an abnormal risk of injury. | ***SRC Act***: paragraph 6(1)(e). |
| 11.7 | Suffered after 30/11/1988. | The injury was sustained while the ***employee*** was at a place for any of the purposes listed in Note 2. | This deeming provision does not apply if the injury was sustained because the ***employee*** voluntarily and unreasonably submitted to an abnormal risk of injury. | See Note 2 for purposes covered by this deeming provision.  ***SRC Act***: paragraph 6(1)(f). |
| 11.8 | Suffered after 12/04/2007. | The injury was sustained while the ***employee*** was, at the direction or request of their employer, travelling for the purpose of their employment. | Travel between the ***employee’s place of residence*** and the ***employee's*** usual***place of work*** is taken not to be at the direction or request of the ***employee's*** employer. | See Note 1 for journeys to or from a ***place of residence***.  ***SRC Act***: paragraph 6(1)(d). |
| 11.9 | Suffered after 30/11/1988. | The injury was sustained while the ***employee*** was travelling between the ***employee’s place of work*** and a place of education for the purpose of attending that place in accordance with (any of the following):   * a condition of the ***employee’s***employment; * a request or direction of the ***employee's*** employer; or * the approval of the ***employee's*** employer. | No exceptions. | ***SRC Act***: paragraph 6(1)(ea). |
| 11.10 | Suffered after 30/11/1988. | The injury was sustained while the ***employee*** was travelling between the ***employee’s place of work*** and another place for any of the purposes listed in Note 2. | No exceptions. | See Note 2 for purposes covered by this deeming provision.  ***SRC Act***: paragraph 6(1)(g). |
| 11.11 | Suffered after 30/11/1988 and before 13/04/2007. | The injury was sustained while the ***employee*** was either:   * travelling between any of the following places:   + their ***place of residence*** and ***place of work***, other than during an ordinary recess in the ***employee's*** employment;   + the place where they normally reside and another place, being a place where they reside temporarily, as a matter of necessity or convenience, for the purposes of their employment;   + one of their ***places of work*** and another of their ***places of work***;   + their ***place of residence*** and any other place for any of the purposes listed in Note 2; or * travelling (unless travelling while on leave without pay) between their ***place of residence*** and a place of education for the purpose of attending that place in accordance with (any of the following):   + a condition of the ***employee’s***employment;   + a request or direction of the ***employee's*** employer; or   + the approval of the ***employee's*** employer. | This deeming provision does not apply to travel after 12/04/2007 or where the travel was either:   * by a route that substantially increased the risk of sustaining an injury when compared with a more direct route; or * interrupted in a way that substantially increased the risk of sustaining an injury. | See Note 2 for purposes covered by this deeming provision.  ***SRC Act*** (as in force before 13/04/2007): paragraph 6(1)(b). |
| **Note 1:** For injuries suffered after 14/01/1996, it was clarified that:   * a journey from a ***place of residence*** is taken to start at the boundary of the land where the ***place of residence*** is situated; * a journey to a ***place of residence*** is taken to end at the boundary of the land where the ***place of residence*** is situated; and * if an ***employee*** owns or occupies a parcel of land contiguous with (that is, touching or near to) the land on which the employee’s ***place of residence*** is situated, the boundary referred to in the preceding points is the external boundary of all of the contiguous parcels of land if treated as a single parcel. | | | | |
| **Note 2:** The following purposes are covered by the relevant deeming provision:   * obtaining a medical certificate for the purposes of the ***SRC Act***; * receiving ***medical treatment*** for an ***injury***; * undergoing a ***rehabilitation program***; * receiving a payment of compensation under the ***SRC Act***; * undergoing a ***medical examination*** or ***rehabilitation assessment*** in accordance with a requirement made under the ***SRC Act***; and * receiving money due to the ***employee*** under the terms of their employment, being money that, under the terms of that employment or any agreement or arrangement between the ***employee*** and their employer, is available, or reasonably expected by the ***employee*** to be available, for collection at that place. | | | | |

What is not a Compensable Injury?

This subsection applies to a ***disease*** or injury in the primary sense (or the ***aggravation*** of such an injury) suffered by an ***employee*** after 30/11/1988. The following may help you answer the question:

*Is the****disease****, injury or****aggravation****, excluded from the definition of****injury****?*

The conditions in Table 12 are excluded from the definition of ***injury*** for the purposes of the Comcare Scheme.

**Table 12—Summary of Excluded Ailments, Injuries and Aggravations**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=12;up=0#sorted_table) | [**Date suffered**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=12;up=0#sorted_table) | [**Type of *injury***](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=12;up=0#sorted_table) | [**Exclusionary provision**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=12;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=4;table=12;up=0#sorted_table) |
| --- | --- | --- | --- | --- |
| 12.1 | Suffered after 30/11/1988. | Either of the following:   * ***ailment***; or * ***aggravation*** of an ***ailment***. | Excluded from the definition of ***injury*** if (all of the following must be true):   * the ***employee*** previously suffered from the ***ailment***; * at any time, for purposes connected with the ***employee's*** employment or proposed employment, the ***employee*** made a representation that they did not suffer, or had not previously suffered, from that ***ailment***; and * that representation was both wilful and false. | See Note 1 for use of the term ***ailment***in the summary of this exclusionary provision.  ***SRC Act***: subsection 7(7). |
| 12.2 | Suffered after 30/11/1988 and before 13/04/2007. | Either of the following:   * ***ailment***; or * ***aggravation*** of an ***ailment***. | A ***disease*** is excluded from the definition of ***injury*** if the ***ailment*** or ***aggravation*** (both of the following must be true):   * was contributed to, in a ***material degree***, by the ***employee’s*** employment; and * would not have been contributed to, to a ***material degree***, by the ***employee’s*** employment without either:   + the taking of reasonable disciplinary action against the ***employee***; or   + failure by the ***employee*** to obtain a promotion, transfer or benefit in connection with their employment. | See Note 2 for whether the disciplinary action or failure needs to be the sole cause.  ***SRC Act*** (as in force before 13/04/2007): see definition of ***injury*** in subsection 4(1). |
| 12.3 | Suffered after 30/11/1988 and before 13/04/2007. | Either of the following:   * injury (other than a ***disease***); or * ***aggravation*** of an injury (other than a ***disease***). | Excluded from the definition of ***injury*** if the injury or ***aggravation*** (both of the following must be true):   * arose out of, or in the course of, the ***employee’s***employment; and * would not have arisen out of, or in the course of, the ***employee’s*** employment without either:   + the taking of reasonable disciplinary action against the ***employee***; or   + failure by the ***employee*** to obtain a promotion, transfer or benefit in connection with their employment. |
| 12.4 | Suffered after 12/04/2007. | Either of the following:   * ***ailment***; or * ***aggravation*** of an ***ailment***. | A ***disease*** is excluded from the definition of ***injury*** if the ***ailment*** or ***aggravation*** (both of the following must be true):   * was contributed to, in a ***significant degree***, by the ***employee’s*** employment; and * would not have been contributed to, to a ***significant degree***, by the ***employee’s*** employment without the taking of reasonable administrative action in a reasonable manner in respect of the ***employee’s*** employment. | See the following:   * Note 3 for what is taken to be reasonable administrative action; * Note 4 for perceived consequence of the administrative action; and * Note 5 for whether the administrative action needs to be the sole cause.   ***SRC Act***: section 5A. |
| 12.5 | Suffered after 12/04/2007. | Either of the following:   * injury (other than a ***disease***); or * ***aggravation*** of an injury (other than a ***disease***). | Excluded from the definition of ***injury*** if the injury or ***aggravation*** (both of the following must be true):   * arose out of, or in the course of, the ***employee’s***employment; and * would not have arisen out of, or in the course of, the ***employee’s*** employment without the taking of reasonable administrative action in a reasonable manner in respect of the ***employee’s*** employment. |
| **Note 1:** The exclusionary provisions in section 7 of the ***SRC Act*** use the term 'disease' in its ordinary sense. However, the defined term ***disease*** only refers to an ***ailment*** and the ***aggravation*** of an ***ailment***. The ordinary meaning of disease and the defined meaning of ***ailment*** are substantially similar. In most cases, a disease will also be an ***ailment***. For these reasons, this table uses the term ***ailment*** when summarising the exclusionary provisions in section 7. | | | | |
| **Note 2:** The disciplinary action, or failure to obtain a promotion, transfer or benefit in connection with employment, need not be the sole cause of the ***ailment***, injury or ***aggravation***. That is, there may be multiple causes, some of which may be related to other aspects of the ***employee’s*** employment. | | | | |
| **Note 3:** Reasonable administrative action is taken to include (but is not limited to):   * a reasonable appraisal of the ***employee's*** performance; * a reasonable counselling action (whether formal or informal) taken in respect of the ***employee's*** employment; * a reasonable suspension action in respect of the ***employee's*** employment; * a reasonable disciplinary action (whether formal or informal) taken in respect of the ***employee's*** employment; * anything reasonable done in connection with an action mentioned in the preceding points; and * 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 their employment.   However, for the exclusionary provision to apply, the ***relevant authority*** will need to be satisfied that the administrative action was all of the following:   * reasonable in the circumstances; * not inconsistent with:   + applicable Australian law, including any relevant agreement or award made under such law; or   + the terms of the ***employee's*** engagement; * taken in respect of the ***employee’s*** employment, where such employment may:   + include the conditions in which the ***employee*** works, the terms of the ***employee's*** engagement or the ***employee's*** duties; and   + exclude (depending on the circumstances) matters of general administration, management and implementation of policy; and * taken in a reasonable manner. | | | | |
| **Note 4:** The nature of the perceived consequence of the administrative action may not be relevant for the purpose of determining whether the injury was suffered as a result of the administrative action. That is, it may not matter whether the ***employee*** believed the administrative action would have a personal or professional, direct or indirect, real or imagined consequence. | | | | |
| **Note 5:** The administrative action need not be the sole cause of the ***ailment***, injury or ***aggravation***. That is, there may be multiple causes, some of which may be related to other aspects of the ***employee’s*** employment. | | | | |

[ [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID) | [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID) | [Accident Not Causing Injury](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ANCI) | [Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NEC) ]

﻿Accident

This section contains a summary of provisions relating to an accident occurring after 30/11/1988 and in the course of employment covered by the Comcare Scheme. The following information may help you answer the question:

*Did the accident arise out of and in the course of the****employee's****employment?*

For an accident to arise out of and in the course of employment (both of the following must be true):

* the employment must have caused or contributed to the accident (but the employment does not need to be the only, or the most significant, cause or contributing factor); and
* the employment and the accident must have occurred at the same time.

[ [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID) | [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID) | [Accident Not Causing Injury](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ANCI) | [Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NEC) ]

﻿Dependency

This section contains a summary of provisions relating to the death of an ***employee*** after 30/11/1988. The following information may help you answer the question:

*Is the dependent person a****dependant****of the deceased****employee****?*

The law concerning dependency can be complex. The following is a general guide as to who may be a ***dependant*** entitled to compensation under the Comcare Scheme.

A ***dependant***, in relation to a deceased ***employee***, is a person who satisfies the criteria in one of the rows in Table 13.

**Table 13—Summary of Dependant Provisions**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=13;up=0#sorted_table) | [**Person**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=13;up=0#sorted_table) | [**Summary of conditions**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=13;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=13;up=0#sorted_table) |
| --- | --- | --- | --- |
| 13.1 | A ***child***of the ***employee*** (unborn at the date of death). | The ***child*** must have been born alive after the ***employee's*** death. | ***SRC Act***: sections 4 and 17. |
| 13.2 | A ***child*** of the ***employee*** (under 16 at the date of death). | One of the following must be true:   * immediately before the ***employee's*** death**—**the ***child*** was living with the ***employee***; or * at the date of the ***employee's*** death**—**the ***child*** was wholly or partly dependent for economic support on the ***employee***, or would have been so dependent but for an incapacity of the ***employee*** that resulted from an ***injury***. |
| 13.3 | A ***child*** of the ***employee*** (16 or more but under 25 at the date of death). | One of the following must be true:   * immediately before the ***employee's*** death**—**the ***child*** was living with the ***employee***, receiving full-time education at a school, college, university or other educational institution and not ordinarily in employment or engaged in work on their own account; or * at the date of the ***employee's*** death**—**the ***child*** was wholly or partly dependent for economic support on the ***employee***, or would have been so dependent but for an incapacity of the ***employee*** that resulted from an ***injury***. |
| 13.4 | The ***spouse*** of the ***employee***, including:   * a ***de facto partner***; and * if the employee was a member of the Aboriginal race of Australia or a descendant of indigenous inhabitants of the Torres Strait Islands—a person who is or was recognised as the ***employee's*** husband, wife or ***spouse*** by the custom prevailing in the tribe or group to which the ***employee*** belongs or belonged. | One of the following must be true:   * immediately before the ***employee's*** death**—**the ***spouse*** was living with the ***employee***; or * at the date of the ***employee's*** death**—**the ***spouse*** was wholly or partly dependent for economic support on the ***employee***, or would have been so dependent but for an incapacity of the ***employee*** that resulted from an ***injury***. |
| 13.5 | The ***parent***, ***step-parent***, father-in-law, mother-in-law, grandparent, ***stepchild***, grandchild, sibling or half-sibling of the ***employee*** *.* | The person must have been wholly or partly dependent for economic support on the ***employee*** at the date of the ***employee's*** death or would have been so dependent but for an incapacity of the ***employee*** that resulted from an ***injury*** *.* |
| 13.6 | A person in relation to whom the ***employee*** stood in the position of a ***parent***or who stood in the position of a ***parent***to the ***employee*** *.* |

[ [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID) | [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID) | [Accident Not Causing Injury](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ANCI) | [Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NEC) ]

﻿Compensation

This section contains a summary of provisions relating to compensation under the Comcare Scheme.

The information is presented on the basis that compensation is payable under the scheme in respect of an ***injury*** suffered by an ***employee***.

The following information, together with the summary of eligibility and entitlements in [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID) and [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID), may help you answer the question:

*Is compensation payable for the****injury****?*

The following different kinds of compensation are available under the scheme in relation to an ***injury***:

* [Medical Treatment;﻿](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#MT)
* [Incapacity for Work](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IFW);
* [﻿Household Services](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#HS);
* [﻿Attendant Care Services](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ACS);
* [﻿Alterations, Modifications, Aids and Appliances](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#AMAAA);
* [﻿Permanent Impairment and Non-Economic Loss](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#PIANEL);
* [﻿Death Benefit](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#DB); and
* [﻿Funeral Expenses](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#FE).

﻿Medical Treatment

If ***medical treatment*** is obtained in relation to an ***injury***, being treatment that it was reasonable for the ***employee*** to obtain in the circumstances, the ***relevant authority*** must pay an amount of compensation that it determines is appropriate to that treatment.

That is the case whether or not the ***injury*** results in death, ***incapacity for work*** or ***impairment***.

***SRC Act***: section 16.

Meaning of Medical Treatment

Not all forms of treatment are covered by the Comcare Scheme.

The term ***medical treatment*** means any of the following:

* medical or surgical treatment by, or under the supervision of, a legally qualified medical practitioner;
* certain therapeutic treatment, including an examination, test or analysis done for the purpose of diagnosing, or treatment given for the purpose of alleviating, an ***injury***—conditions apply to therapeutic treatment, discussed in the next paragraph;
* dental treatment by, or under the supervision of, a legally qualified dentist;
* an examination, test or analysis carried out on, or in relation to, an ***employee*** at the request or direction of a legally qualified medical practitioner or dentist and the provision of a report in respect of such an examination, test or analysis;
* the supply, replacement or repair of ***property used by the employee***;
* treatment and maintenance as a patient at a hospital; and
* nursing care, and the provision of medicines, medical and surgical supplies and curative apparatus, whether in a hospital or otherwise.

Only the following therapeutic treatment is included in the term ***medical treatment***:

* therapeutic treatment obtained at the direction of a legally qualified medical practitioner;
* therapeutic treatment by, or under the supervision of, a physiotherapist, osteopath, masseur or chiropractor registered under the law of a State or Territory providing for the registration of persons of that kind; and
* after 31/03/2002—therapeutic treatment by, or under the supervision of, an occupational therapist, optometrist, podiatrist, psychologist or speech therapist registered under the law of a State or Territory providing for the registration of persons of that kind or, if there is no such law, a member of a relevant professional association***.***

You may be unsure whether a particular form of treatment is compensable under the scheme. If so, or if the treatment is expensive or unusual, but not urgent, you could contact the ***relevant authority*** before obtaining, or incurring an expense in relation to, that treatment.

Whether or not a treatment is compensable, you should follow the advice of your treating medical practitioner.

***SRC Act***: section 4.

Journey and Accommodation Expenses

Additional compensation may be payable if the ***employee*** reasonably incurs an expense making a necessary journey, or remaining at a place to which they had made such a journey, for the purpose of obtaining compensable ***medical treatment***.

In summary, the ***relevant authority*** is required to pay:

* if the journey commenced before 24/12/1992 and covered a substantial distance—an amount of compensation equal to the expenditure;
* if the journey commenced after 23/12/1992 and was more than 50 kilometres return—an amount of compensation based on a specified rate per kilometre multiplied by the number of kilometres the ***relevant authority*** determines to have been reasonable for that journey (for current specified rates, see [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates));
* if the journey involved the use of public transport or ambulance services, and the ***employee's injury*** reasonably required the use of such transport or services regardless of the distance—an amount of compensation equal to the expenditure; and
* if the ***employee*** remained at a place to which they had made such a journey—an amount of compensation equal to the expenditure.

When assessing the entitlement to journey and accommodation compensation, the ***relevant authority*** must consider the place or places where appropriate ***medical treatment*** was available to the ***employee***, the means of transport available to the ***employee*** for the journey, the route or routes by which the ***employee*** could have travelled, and the accommodation available to the ***employee***.

***SRC Act***: section 16.

﻿Incapacity for Work

The ***relevant authority*** must pay compensation in respect of an ***injury*** resulting in ***incapacity for work***. However, the amount of compensation may be nil depending on several factors.

For a summary of eligibility and entitlements relating to ***incapacity for work***, see [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID). For additional information relating to the calculation of entitlements, keep reading.

Step-Down at 45 Weeks

Weekly compensation is payable if the ***employee's incapacity for work*** prevents them working their ***normal weekly hours*** in a particular week because they are either:

* unable to work; or
* unable to work at the level at which they worked before the ***injury***.

The term ***normal weekly hours*** means the average number of hours including overtime (which includes any duty on shifts or on Saturdays, Sundays or other holidays, and excess travelling time) worked during the ***relevant period***.

Compensation is payable at 100% of the ***employee's*** ***normal weekly earnings*** (before deductions) until the total number of hours that the ***employee*** has been prevented from working, or working at that level, equals 45 times the employee's ***normal weekly hours***.

For example, if the ***employee*** is unable to do any work, the 45-week period will run for 45 calendar weeks. However, if the ***employee*** is able to work a few hours per day or a few days per week, the 45-week period could run for more than 45 calendar weeks.

After the 45-week period, compensation is payable as a percentage of ***normal weekly earnings*** (before deductions) depending on how many hours the ***employee*** worked in a particular week. Generally, as shown in Table 14, the more hours worked, the more compensation is payable.

**Table 14—Summary of Step-down Provisions**

| [**Percentage of *normal weekly hours* worked in a week**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=14;up=0#sorted_table) | [**Percentage of *normal weekly earnings* after 45 weeks**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=14;up=0#sorted_table) |
| --- | --- |
| Nil | 75% |
| Up to 25% | 80% |
| 26% to 50% | 85% |
| 51% to 75% | 90% |
| 76% to less than 100% | 95% |
| 100% | 100% |

﻿Normal Weekly Earnings

These are the employee's earnings prior to the date of the ***injury***. To help you identify the date of the ***injury***, see [When is an Ailment, Injury or Aggravation Suffered?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#WIAIODS).

Subject to certain exceptions, the ***normal weekly earnings*** of an ***employee*** are generally calculated as follows:

1. Multiply the average number of hours worked in each week by the ***employee*** in their employment during the ***relevant period*** by the ***employee's*** average hourly ordinary time rate of pay during that period.
2. Add to the first amount the average amount of any allowance payable to the ***employee*** in each week in respect of their employment during the ***relevant period***, other than an allowance payable in respect of special expenses incurred, or likely to be incurred, by the ***employee*** in respect of that employment.
3. If the employee was required to work overtime (including any duty on shifts or on Saturdays, Sundays or other holidays, and excess travelling time) on a regular basis—multiply the average number of hours of overtime worked in each week by the ***employee*** in their employment during the ***relevant period*** by the ***employee's*** average hourly overtime rate of pay during that period and add that amount to the first amount.
4. If the ***employee' s*** employment by a ***scheme employer*** was, at the date of the ***injury***, part-time or unpaid employment—add any earnings of the employee from any other employment during the ***relevant period*** to the first amount.

The exceptions to the general rules are:

* if, at the date of the ***injury***, either:  
    
  + the ***employee' s*** employment by a ***scheme employer*** was part-time or unpaid employment, and the ***employee*** was not receiving earnings from any other employment; or
  + the ***employee*** was a ***deemed employee*** of a ***scheme employer*** (other than the ***ACT***), and the ***employee*** was not receiving earnings from any other employment,

the ***normal weekly earnings*** amount is determined by the ***relevant authority*** to be the amount per week that the ***employee*** would have been able to earn at the date of the ***injury*** (including regular overtime) if they had engaged in paid ***suitable employment***; and

* if the ***relevant period*** is too short and it is therefore not practical to calculate ***normal weekly earnings***—the ***normal weekly earnings*** of another employee of the same employer performing comparable work may be used.

***SRC Act***: section 8.

Adjustments to Normal Weekly Earnings Amount

If the minimum amount per week payable to the ***employee*** in respect of their employment by a ***scheme employer*** at the date of the ***injury*** is (or would have) increased either:

* because the ***employee*** has reached a particular age or completed a particular period of service; or
* because of an increment in a range of salary, wages or pay applicable to the ***employee*** or to their office, position or appointment,  
    
  the ***normal weekly earnings*** amount is increased by the same percentage as the percentage by which that minimum amount per week is (or would have) increased.

If the ***employee*** continues to be employed by a ***scheme employer*** after the date of the ***injury***, the ***normal weekly earnings*** amount is increased or decreased by the same percentage as the percentage by which the minimum amount per week payable to:

* the ***employee*** is increased because of the promotion of the ***employee***; or
* if the ***employee*** was a member of a class of employees at the date of the ***injury***—the class of employees to which the ***employee*** was a member is increased or decreased by law or agreement.

The ***normal weekly earnings*** amount is further increased on 1 July each year by reference to a prescribed percentage (see [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates)) and a prescribed formula if either:

* the ***employee*** has ceased (or ceases to be) to be employed by a ***scheme employer*** after the date of the ***injury***; or
* in the prior 12 months there was no increase in earnings by operation of the rules above.

Finally, the ***normal weekly earnings*** amount calculated using all of the above rules must be reduced in the following cases:

* if the ***employee*** continues to be employed by a ***scheme employer***—the amount is reduced to equal the weekly amount the ***employee*** would receive if they were not ***incapacitated for work***; or
* if the ***employee*** has ceased to be employed by a ***scheme employer***—the amount is reduced to equal the weekly amount the ***employee*** would receive if they had continued to be employed by their ***scheme employer*** (whichever is greater):  
    
  + in the employment in which they were engaged at the date of the ***injury***; or
  + at the date on which the employment ceased.

***SRC Act***: section 8.

﻿Relevant Period

The ***relevant period*** is the last period of two weeks before the date of the ***injury*** during which the ***employee*** was continuously employed by a ***scheme employer*** unless:

* the minimum amount per week payable to an ***employee*** in this period was varied by law or agreement—in which case, ignore any part of the period before the last variation (but if this means it would not be practical to calculate ***normal weekly earnings***, or the earnings so calculated would not be a fair representation of the ***employee's*** pre-injury weekly earnings, assume the variation had occurred at the beginning of the period);
* during any part of this period, the ***employee's*** earnings were reduced, or were nil, due to absence from employment for any reason—in which case, ignore that part of the period; or
* the ***normal weekly earnings*** calculated using this period would not be a fair representation of the ***employee's*** pre-injury weekly earnings because the ***relevant period*** is too short—the ***relevant authority*** must use another reasonable period that fairly represents what the ***employee*** was being paid.

***SRC Act***: section 9.

Adjustments to Weekly Compensation Amount

When assessing the amount per week an ***employee*** is able to earn in ***suitable employment***, the ***relevant authority*** must take into account all relevant matters. Some of those matters are prescribed in the ***SRC Act***.

For example, if the ***employee*** unreasonably fails to undertake or complete one of the following activities, the ***relevant authority*** must have regard to the amount per week the ***employee*** would be earning if the ***employee*** had not unreasonably failed to undertake or complete that activity:

* accept an offer of ***suitable employment***;
* engage and continue to continue to engage in ***suitable employment***;
* complete a reasonable ***rehabilitation program*** or vocational retraining program if completion of such a program is a condition to an offer of ***suitable employment***; or
* seek ***suitable employment***.

If the ***employee*** is retired from their employment (whether voluntarily or compulsorily) and the ***employee*** receives a pension, lump sum or both, under a ***superannuation scheme*** as a result of their retirement, the ***relevant authority*** must also reduce the weekly compensation amount in accordance with a formula prescribed in the ***SRC Act***.

If the ***employee*** is not retired from their employment or not in receipt of a pension, lump sum or both, under a ***superannuation scheme*** as a result of their retirement, the weekly compensation amount may be reduced by up to half for each week the ***employee*** is maintained as a patient in a hospital, nursing home or similar place as a result of an ***injury***. This can only happen if both of the following are true:

* the ***employee*** has been so maintained continuously for one or more years; and
* there are no ***prescribed persons*** or ***prescribed children*** who are dependent for economic support on the ***employee***.

***SRC Act***: sections 19-23A.

Redemption of Weekly Compensation

If the weekly compensation amount is equal to or less than a prescribed amount (for current amount, see [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates)) and the ***relevant authority*** is satisfied that the degree of the ***employee's*** incapacity is unlikely to change, the ***relevant authority*** must make a ***determination*** redeeming the weekly compensation amount as a lump sum in accordance with a formula prescribed in the ***SRC Act***.

Weekly compensation is then not payable unless the ***injury*** results in the ***employee*** being ***incapacitated for work*** to the extent that the ***employee*** is not able to engage in ***suitable employment*** and the incapacity is likely to continue indefinitely. In this case, the ***relevant authority*** is liable to pay weekly compensation to the ***employee*** taking into account the prior lump sum.

***SRC Act***: sections 23, 30 and 31.

﻿Household Services

If, as a result of an ***injury***, an ***employee*** obtains services of a domestic nature (including cooking, house cleaning, laundry and gardening services) that are reasonably required for the proper running and maintenance of the ***employee's*** household, the ***relevant authority*** must pay an amount that is both:

* reasonable in the circumstances; and
* no less than 50% of the cost of the services and no more than the maximum weekly compensation amount (for current amount, see [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates)).

If, as a result of a ***catastrophic injury***, an ***employee*** obtains services of a domestic nature (including cooking, house cleaning, laundry and gardening services) that are reasonably required for the proper running and maintenance of the ***employee's*** household, the ***relevant authority*** must pay an amount per week that it considers reasonable in the circumstances.  
  
The matters that the ***relevant authority*** may take into account in determining if ***household services*** were reasonably required include:

* the extent to which ***household services*** were provided by the ***employee*** before the date of the ***injury*** or ***catastrophic injury***, as the case may be, and the extent to which they are able to provide those services after that date;
* in relation to any persons living with the ***employee*** as members of the ***employee's*** household:  
    
  + the number of such persons, their ages and their need for ***household services***;
  + the extent to which ***household services*** were provided by such persons before the ***injury*** or ***catastrophic injury***, as the case may be;
  + the extent to which such persons might reasonably be expected to provide ***household services*** for themselves and for the ***employee*** after the ***injury*** or ***catastrophic injury***, as the case may be; and
  + the need to avoid substantial disruption to the employment or other activities of such persons; and
* the extent to which any other members of the ***employee's*** family might reasonably be expected to provide ***household services*** for themselves and for the ***employee*** after the ***injury*** or ***catastrophic injury***, as the case may be.

In the case of an ***injury*** other than a ***catastrophic injury***, compensation is only payable in relation to ***household services*** obtained after 28 days from the date of the ***injury***. However, the ***relevant authority*** may make a ***determination*** that compensation is payable in that period on either of the following grounds:

* financial hardship; or
* the need to provide for adequate supervision of ***children***who are dependent for economic support on the ***employee***.

***SRC Act***: sections 4, 29 and 29A.

﻿Attendant Care Services

If, as a result of an ***injury***, an ***employee*** obtains services (other than ***household services***, medical or surgical services or nursing care) that are reasonably required for the essential and regular personal care of the ***employee***, the ***relevant authority*** must pay an amount that is the lesser of:

* the amount paid or payable by the ***employee*** for the services; or
* the maximum weekly compensation amount (for current amount, see [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates)).

If, as a result of a ***catastrophic injury***, an ***employee*** obtains services (other than ***household services***, medical or surgical services or nursing care) that are reasonably required for the essential and regular personal care of the ***employee***, the ***relevant authority*** must pay an amount per week that it considers reasonable in the circumstances.  
  
The matters that the ***relevant authority*** may take into account in determining if ***attendant care services*** were reasonably required include:

* the nature of the ***employee's injury*** or ***catastrophic injury***, as the case may be, and the degree to which that ***injury*** impairs their ability to provide for their personal care;
* the extent to which any medical service or nursing care received by the ***employee*** provides for their essential and regular personal care;
* the extent to which it is reasonable to meet any wish by the ***employee*** to live outside an institution;
* the extent to which ***attendant care services*** are necessary to enable the ***employee*** to undertake or continue employment;
* any assessment made in relation to the ***rehabilitation*** of the ***employee***; and
* the extent to which a relative of the ***employee*** might reasonably be expected to provide ***attendant care services***.

***SRC Act***: sections 4, 29 and 29A.

﻿Alterations, Modifications, Aids and Appliances

This form of compensation is only available if an ***employee*** suffers an ***injury*** resulting in an ***impairment***, and the ***employee*** is undertaking, or has completed, a ***rehabilitation program*** or has been assessed as not capable of undertaking such a program.

If that is the case, the ***relevant authority*** must pay a reasonable amount of compensation for:

* any alteration of the ***employee's place of residence*** or ***place of work***;
* any modifications of a vehicle (a means of transport) used by the ***employee***;
* any modifications of an article (an item or thing) used by the ***employee***;
* any aids (something that provides assistance) for the use of the ***employee***, or the repair or replacement of such aids; and
* any appliances (usually a mechanical device designed to assist a disabled person) for the use of the ***employee***, or the repair or replacement of such appliances,  
    
  being alterations, modifications or aids or appliances reasonably required by the ***employee***, having regard to the nature of the ***employee's impairment*** and, where appropriate, the requirements of the ***rehabilitation program***.

In determining the amount of compensation payable, the ***relevant authority*** must consider:

* the likely period during which the alteration, modification, aid or appliance will be required;
* any difficulties faced by the ***employee*** in gaining access to, or enjoying reasonable freedom of movement in, their ***place of residence*** or ***place work***;
* any difficulties faced by the ***employee*** in gaining access to, driving or enjoying freedom and safety of movement in, a vehicle used by the ***employee***;
* any alternative means of transport available to the ***employee***; and
* whether arrangements can be made for hiring the relevant aid or appliance.

If the ***employee*** has previously received compensation under the Comcare Scheme in respect of an alteration of their ***place of residence***, or a modification of a vehicle, and the ***employee*** later disposed of that ***place of residence*** or vehicle, the ***relevant authority*** must also consider whether the value of that ***place of residence*** or vehicle was increased as a result of the alteration or modification.

***SRC Act***: section 39.

Impairment

The ***relevant authority*** must pay compensation in respect of an ***injury*** resulting in ***permanent impairment*** unless the degree of that ***impairment*** is less than the relevant prescribed threshold (see [Prescribed Thresholds](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#PT)).

The degree of ***impairment***must be assessed under the ***approved guide***.

If the ***relevant authority*** is liable to pay ***permanent impairment*** compensation, it must pay an extra amount for any ***non-economic loss*** suffered by the ***employee*** as a result of that ***injury*** or ***impairment*** (unless the ***permanent impairment*** commenced before 01/12/1988).

The degree of ***non-economic loss*** must also be assessed under the ***approved guide***.

The ***permanent impairment*** and ***non-economic loss*** amounts are calculated with reference to maximum lump sum amounts. For current maximum amounts, see [comcare.gov.au](https://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/fees,_rates_and_reimbursements/statutory_rates).

***SRC Act***: sections 24-28.

Permanent Impairment

For the purposes of the Comcare Scheme:

* ***impairment*** means 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; and
* ***permanent impairment*** means an ***impairment*** that is likely to continue indefinitely in light of all relevant matters including the duration of the ***impairment***, the likelihood of improvement in the ***employee's*** condition and whether the ***employee*** has undertaken all reasonable rehabilitative treatment for the ***impairment***.

According to the ***approved guide***:

* the degree of ***impairment*** is assessed by reference to the impact of that loss by reference to the functional capacities of a normal healthy person;
* ***impairment*** is measured against its effect on personal efficiency in the ‘activities of daily living’ in comparison with a normal healthy person;
* the measure of ‘activities of daily living’ is a measure of primary biological and psychosocial function; and
* 'activities of daily living' are the ability to receive and respond to incoming stimuli, standing, moving, feeding (includes eating but not the preparation of food), control of bladder and bowel, self care (bathing, dressing and the like) and sexual function.

For more information, see the principles of assessment in Part 1 of the ***approved guide***.

***SRC Act***: sections 4 and 24.

Non-Economic Loss

For the purposes of the Comcare Scheme, ***non-economic loss*** means, in relation to an ***employee*** who has suffered an ***injury*** resulting in a ***permanent impairment***, loss or damage of a non-economic kind suffered by the ***employee*** (including pain and suffering, a loss of expectation of life or a loss of the amenities or enjoyment of life) as a result of that ***injury*** or ***impairment*** and of which the ***employee*** is aware.

According to the ***approved guide***:

* ***non-economic loss*** is a subjective concept of the effects of the ***impairment***on the ***employee’s*** life;
* 'loss of amenities' means the effects on mobility, social relationships and recreation and leisure activities;
* 'pain' means physical pain; and
* 'suffering' means the mental distress resulting from the ***injury*** or ***impairment***.

For more information, see the principles of assessment in Part 1 of the ***approved guide***.

***SRC Act***: sections 4 and 27.

Interim, Final and Reassessment Determinations

If the ***relevant authority*** makes a ***determination*** that an ***employee*** is suffering from a ***permanent impairment*** as a result of an ***injury***, but has not made a final ***determination*** of the degree of ***impairment*** (for example, because the ***impairment*** has not stabilised), the ***employee*** may write to the ***relevant authority*** asking for an interim ***determination*** of the degree of ***permanent impairment*** and the amount of compensation payable.

Prescribed thresholds apply to interim ***determination*** (see [Prescribed Thresholds](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#PT)), and only the ***permanent impairment*** amount is payable. That is, the ***non-economic loss*** amount is not payable until the final ***determination*** is made.

The ***relevant authority*** must then deduct the amount paid under any interim ***determination*** from the amount payable under the final ***determination***.

Once a final ***determination*** is made, no further amounts of ***permanent impairment*** compensation are payable unless there is a subsequent increase in the degree of ***permanent impairment*** of at least the relevant prescribed threshold (see [Prescribed Thresholds](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#PT)).

***SRC Act***: section 26.

﻿Prescribed Thresholds

Table 15 contains a summary of the thresholds prescribed for the scheme.

**Table 15—Summary of Prescribed Thresholds**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=15;up=0#sorted_table) | [***Permanent impairment***](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=15;up=0#sorted_table) | [**Prescribed threshold**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=15;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=15;up=0#sorted_table) |
| --- | --- | --- | --- |
| 15.1 | The loss, or the loss of the use, of a finger or toe. | Type of ***determination***:   * interim—10%; * final—no threshold; or * after final—increase of 10%. | ***SRC Act***: subsections 24(8), 25(1) and 25(4). |
| 15.2 | The loss of the sense of taste or smell. | Type of ***determination***:   * interim—10%; * final—no threshold; or * after final—increase of 10%. | ***SRC Act***: subsections 24(8), 25(1) and 25(4). |
| 15.3 | Hearing loss. | Type of ***determination***:   * interim—10%; * final—5% binaural; or * after final—increase of 5% binaural. | See Note 1 for meaning of binaural hearing loss.  ***SRC Act***: subsections 24(7A), 25(1) and 25(5). |
| 15.4 | Anything else. | Type of ***determination***:   * interim—10%; * final—10%; or * after final—increase of 10%. | See Note 2 for what is included in this category.  ***SRC Act***: subsections 24(7), 25(1) and 25(4). |
| **Note 1:** Binaural hearing loss means hearing loss from both ears. Under the ***approved guide***, 5% binaural hearing loss equals 2.5% impairment of the whole person***.*** | | | |
| **Note 2:** This includes any ***permanent impairment*** not covered above, including any ***permanent impairment*** resulting from a psychiatric or psychological ***injury*** suffered as a consequence of, or secondary to, an earlier ***injury***. However, each ***injury*** is subject to the relevant prescribed threshold. That is, you cannot combine impairments from different ***injuries*** to reach the relevant prescribed threshold. If a single ***injury*** results in multiple ***impairments***, in some cases you may combine those ***impairments*** or choose the higher ***impairment***, subject to the rules in the ***approved guide***. | | | |

Approved Guide

The current ***approved guide*** is the [Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1](https://www.legislation.gov.au/Series/F2011L02375).

If the ***injury*** results in an ***impairment*** of a kind that cannot be assessed under the ***approved guide***, the ***impairment*** may be assessed under the fifth edition of the American Medical Association’s Guides to the Evaluation of Permanent Impairment (***AMA5***).

However, the following ***impairments*** may not be assessed under the ***AMA5***:

* mental and behavioural impairments (psychiatric conditions);
* impairments of the visual system;
* hearing impairment; and
* chronic pain conditions, except in the case of migraine or tension headaches.

An assessment under the ***AMA5*** must still be consistent with the ***SRC Act*** (that is, it must provide an assessment of the ***permanent impairment*** resulting from an ***injury***).

If, prior to an ***injury***, an ***employee*** suffered a degree of ***permanent impairment*** (for any reason) and the degree of that ***impairment*** increases as a result of an ***injury***, the pre-***injury permanent impairment***:

* should be deducted from the post-***injury permanent impairment*** assessed under the ***approved guide***; and
* will generally not be deducted unless it can be assessed under the ***approved guide***.

Depending on the nature and effect of an ***injury***, the degree of ***impairment*** or ***non-economic loss*** determined under the ***approved guide*** may be 0%.

The opinion of a legally qualified medical practitioner with relevant specialist training is usually required to assess the degree of ***permanent impairment*** and ***non-economic loss***.

There is no accreditation of assessors under the Comcare Scheme. You could therefore make enquiries to find an assessor who is trained to use the ***approved guide***, or the ***AMA5*** on which the ***approved guide*** is based.

In the case of ***non-economic loss***, the ***employee's*** treating general practitioner may be able to provide an assessment using an approved form. For approved forms, see comcare.gov.au.

***SRC Act***: section 28.

﻿Alternative Claim for Damages

The general right of an ***employee*** to institute an action or other proceeding for ***damages*** against (that is, the general right to sue) their ***scheme employer****,*or another an employee of that employer, in respect of an ***injury*** sustained by the ***employee*** in the course of their employment was abolished when the Comcare Scheme commenced on 01/12/1988.

However, there is a limited exception to this rule.

If interim or final ***permanent impairment*** or ***non-economic loss*** compensation is payable, and the ***employee's*** employer would otherwise be liable (including for the acts or omissions of its employees) for ***damages*** for any ***non-economic loss*** suffered by the ***employee*** as a result of the ***injury,***the ***employee*** may choose instead to pursue a limited claim for ***damages***.

At any time before the first amount of ***permanent impairment*** or ***non-economic loss*** compensation is paid to the ***employee***, the ***employee*** may elect to sue their employer, or another an employee of that employer, for ***damages*** for that ***non-economic loss***. That is, the ***employee*** may elect to pursue a claim based on fault (among other things) rather than to accept a no-fault lump sum under the Comcare Scheme.

The election to institute an action or other proceeding for ***damages*** (all of the following apply):

* must be in writing (for approved forms, see [comcare.gov.au](https://www.comcare.gov.au/Forms_and_Publications/forms2/claims_forms2));
* cannot later be revoked; and
* does not prevent the ***employee***doing any other thing that constitutes an ***action for non-economic loss***.

The maximum ***damages*** a court may award the ***employee*** is $110,000 for any ***non-economic loss*** (this amount is not indexed). There are strict time limits that apply to most claims for ***damages*** and the rules can vary between States and Territories. In addition, the scheme has strict liability criminal offences in relation to the failure to notify the ***relevant authority*** of a claim for ***damages*** or the recovery of ***damages***.

Given the range of issues to be considered before making such an election, independent legal advice should be sought at the earliest opportunity.

***SRC Act***: sections 4, 44, 45, 47 and 48.

﻿Death Benefit

If an ***injury*** to an ***employee*** results in death, and there was at least one ***dependant*** who was wholly or partly dependent for economic support on the ***employee*** at the date of the ***employee's*** death, the ***relevant authority*** may be liable to pay compensation under the Comcare Scheme. This may include:

* unclaimed or unpaid compensation entitlements to the ***employee's*** estate (for example, ***medical treatment*** expenses, compensation for ***incapacity to work*** prior to death, and the like (see [Survival of Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#SOC));
* weekly dependency payments, for any ***prescribed child***; and
* a lump sum death benefit.

Once a lump sum death benefit is paid, no other ***dependant*** is entitled to claim a lump sum death benefit under the scheme.

If an ***injury*** to an ***employee*** results in death, and there were no ***dependants*** who were wholly or partly dependent for economic support on the ***employee*** at the date of the ***employee's*** death, only the following compensation may be payable under the scheme in respect of the ***injury*** after the ***employee's*** death:

* if ***medical treatment*** was provided in relation to the ***injury***;
* if expenses were incurred transporting the ***employee*** or their body from the place where the ***injury*** was sustained to a hospital or similar place, or to a mortuary;
* if someone paid for or carried out the ***employee's*** funeral; and
* an amount of compensation was payable to the ***employee*** under the scheme, but not yet paid, before the ***employee's*** death.

***SRC Act***: sections 4, 16-18, 39 and 56.

﻿Funeral Expenses

For a summary of eligibility and entitlements in relation to funeral expenses under the Comcare Scheme, see [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#FE_SUM).

***SRC Act***: section 18.

[ [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID) | [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID) | [Accident Not Causing Injury](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ANCI) | [Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NEC) ]

﻿Rehabilitation

This section contains a summary of provisions relating to rehabilitation under the Comcare Scheme.

The information is presented on the basis that compensation is payable under the scheme in respect of an ***injury*** suffered by an ***employee***.

The following kinds of rehabilitation may be available under the scheme in relation to an ***injury***:

* [Rehabilitation Programs](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RP); and
* [Suitable Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#SE).

﻿Rehabilitation Programs

If an ***employee*** suffers an ***injury*** resulting in ***incapacity for work***or ***impairment***, the ***rehabilitation authority*** (not the ***relevant authority***) may provide or arrange a ***rehabilitation program***.

A ***rehabilitation program*** under the Comcare Scheme includes medical, dental, psychiatric and hospital services (whether on an in-patient or out-patient basis), physical training and exercise, physiotherapy, occupational therapy and vocational training.

Before making a ***determination*** that the ***employee*** should undertake such a program, the ***rehabilitation authority*** may arrange for a ***rehabilitation assessment***.

If the ***employee*** requests a ***rehabilitation assessment*** in writing, the ***rehabilitation authority*** must arrange one, but only if satisfied that the ***employee's*** ***injury*** results in ***incapacity for work***or ***impairment*** at the time of the request.

﻿Rehabilitation Assessment

In this chapter, ***rehabilitation assessment*** means an assessment of the ***employee's*** capability of undertaking a ***rehabilitation program***.

A ***rehabilitation assessment*** must be made by a legally qualified medical practitioner or other suitably qualified person, or a panel of such persons, nominated by the ***rehabilitation authority***.

The ***rehabilitation authority*** may require the ***employee*** to undergo an examination by the nominated person or persons for the purpose of the assessment. A written ***rehabilitation assessment*** must be given to the ***rehabilitation authority*** following the examination.

If the ***employee*** is required to undergo an examination for the purpose of a ***rehabilitation assessment***, the ***employee*** must not refuse or fail to do so unless they have a reasonable excuse. If the ***employee*** undergoes such an examination, they must not in any way obstruct the examination. Otherwise, some of the ***employee's*** rights and entitlements under the Comcare Scheme may be suspended (see [Preclusion, Suspension and Repayment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#EPAS)).

The ***relevant authority*** must pay the cost of the examination, and any necessary and reasonable journey and accommodation expenses incurred by the ***employee*** (see [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID)).

***SRC Act***: sections 4 and 36.

Rehabilitation Program

The ***rehabilitation authority*** may provide a ***rehabilitation program*** for the ***employee*** itself, or it may make arrangements with an ***approved program provider*** to do so.

When making a ***determination*** that the ***employee*** should undertake a ***rehabilitation program***, the ***rehabilitation authority*** must consider all relevant matters, including all of the following:

* any written ***rehabilitation assessment***;
* any reduction in the future liability to pay compensation if the program is undertaken;
* the cost of the program;
* any improvement in the ***employee's*** opportunity to be employed after completing the program;
* the likely psychological effect on the ***employee*** of not providing the program;
* the ***employee's*** attitude to the program; and
* the relative merits of any alternative and appropriate ***rehabilitation program***.

If the ***employee*** was entitled to receive compensation for ***incapacity work***at the commencement of:

* a full-time ***rehabilitation program***—they should continue to receive the same amount of compensation they would have received if it were assumed that the ***employee's*** incapacity had continued throughout the program; or
* a part-time ***rehabilitation program***—they should receive no less than what they would have received if they were not undertaking the program.

If the ***rehabilitation authority*** makes a ***determination*** that the ***employee*** should undertake a ***rehabilitation program***:

* if the ***employee*** is not happy with the ***determination***—they may request that the ***relevant authority*** (not the ***rehabilitation authority***) reconsider the ***determination*** (time limits apply) (see [Reconsideration](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RECON)); or
* if the ***employee*** otherwise refuses or fails to undertake the ***rehabilitation program*** without a reasonable excuse—some of the ***employee's*** rights and entitlements under the Comcare Scheme may be suspended (see [Preclusion, Suspension and Repayment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#EPAS)).

***SRC Act***: sections 37 and 38.

﻿Suitable Employment

Duty to Provide or Assist to Find Suitable Employment

If an ***employee*** is undertaking a ***rehabilitation program***, or has completed a ***rehabilitation program*** (and continues to suffer an ***injury*** in respect of which compensation is payable under the Comcare Scheme), the ***relevant employer*** must take all reasonable steps to either:

* provide the ***employee*** with ***suitable employment***; or
* assist the ***employee*** to find ***suitable employment***.

***SRC Act***: section 40.

﻿Who is the Relevant Employer?

Subject to the following exceptions, the ***relevant employer*** is:

* if the ***employee*** is currently employed by a ***scheme employer***—the ***employee's*** current ***scheme employee***; or
* if the ***employee*** is no longer employed by a ***scheme employer***—the ***employee's*** last ***scheme employer*** (although you should confirm this with Comcare).

If a ***licensed authority*** is the ***relevant employer*** and that authority ceases to be a ***licensee*** under the scheme (but continues in existence as a ***Commonwealth authority***), Comcare can arrange for the ***relevant employer***function to be performed by a suitable and willing person. If there is no such arrangement, the ***Commonwealth authority*** remains the ***relevant employer***.

If an ***employee*** of a **Commonwealth authority** suffered an ***injury*** resulting in an ***incapacity for work*** or an ***impairment***and that authority ceases to be a ***Commonwealth authority***:

* if the authority continues in existence—the ***relevant employer*** is the former ***Commonwealth authority***; or
* if the authority ceases to exist—the ***relevant employer*** is the ***scheme employer***, body, person, organisation or group of persons specified by the Minister to be successor to the former ***Commonwealth authority*** (there are currently no specified successors).

If a ***licensed corporation***ceases to be a ***licensee*** under the scheme (but continues in existence), Comcare can arrange for the ***relevant employer***function to be performed by a suitable and willing person. If there is no such arrangement, the corporation remains the ***relevant employer***.

***SRC Regs***: regulations 14B and 15B.

***SRC Act***: sections 40, 41B and 41C.

What is Suitable Employment?

The term ***suitable employment*** means:

* if the ***employee*** was a permanent ***employee*** of a ***scheme employer***on the date of the ***injury***, and they continue to be so employed—employment by that employer in work for which the ***employee*** is suited having regard to all relevant matters, including the prescribed matters in the next paragraph; or
* in any other case—any employment (including self-employment), having regard to all relevant matters, including the prescribed matters in the next paragraph.

The prescribed matters are:

* the ***employee's***age, experience, training, language and other skills;
* the ***employee's***suitability for rehabilitation or vocational retraining; and
* where employment is available in a place that would require the ***employee***to change their ***place of residence—***whether it is reasonable to expect the ***employee***to change his or her ***place of residence***.

Comcare's mandatory guidelines provide that the ***rehabilitation authority*** must:

* ensure that the return to work hierarchy is followed so as to support the ***employee*** to return to work with the same ***scheme employer*** wherever practicable, and consider retraining and redeployment alternatives where a return to work with the same employer is not practicable; and
* recognise that the ***employee’s injury***may be a disability as defined by the [Disability Discrimination Act 1992](http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/index.html) (Cth) and that discrimination in employment on the basis of that disability is unlawful.

The return to work hierarchy means the following descending order of goals:

* same duties and role in the same workplace;
* modified duties and role in the same workplace;
* different duties and role in the same workplace;
* same or modified duties and role in a different workplace; and
* different duties and role in a different workplace.

For more information, see Comcare's [Guidelines for Rehabilitation Authorities 2012](https://www.legislation.gov.au/Series/F2012L01121).

***SRC Act***: sections 4 and 40.

[ [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID) | [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID) | [Accident Not Causing Injury](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ANCI) | [Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NEC) ]

Preclusion, Suspension and Repayment

This section contains a summary of provisions relating to preclusion, suspension and repayment under the Comcare Scheme.

The following information may help you answer the question:

*Is the****relevant authority****prevented from paying any or all compensation?*

Summary of Provisions

Table 16 contains a summary of preclusion, suspension and repayment provisions.

**Table 16—Summary of Preclusion, Suspension and Repayment Provisions**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=16;up=0#sorted_table) | [**Event**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=16;up=0#sorted_table) | [**Summary of preclusion, suspension and repayment provisions**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=16;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=16;up=0#sorted_table) |
| --- | --- | --- | --- |
| 16.1 | Intentionally self-inflicted injury.  (Permanent preclusion.) | Compensation is not payable under the Comcare Scheme in respect of an ***injury*** that is intentionally self-inflicted. | ***SRC Act***: subsection 14(2). |
| 16.2 | Serious and wilful misconduct.  (Permanent preclusion.) | Compensation is not payable under the Comcare Scheme in respect of either:   * an ***injury*** that is caused by the serious and wilful misconduct of the ***employee*** but is not intentionally self-inflicted, unless the ***injury*** results in death, or serious and ***permanent impairment***; or * loss or destruction of, or damage to, ***property used by the employee*** if the loss, destruction or damage is attributable to the serious and wilful misconduct of the employee,   and an ***employee*** who is under the influence of alcohol or a drug (other than a drug prescribed for the ***employee*** by a legally qualified medical practitioner or dentist and used by the ***employee*** in accordance with that prescription) is taken to be guilty of serious and wilful misconduct. | ***SRC Act***: subsections 4(13), 14(3) and 15(3). |
| 16.3 | Imprisonment.  (Temporary preclusion.) | Compensation is not payable under the Comcare Scheme to an ***employee*** for ***incapacity for work*** as a result of an ***injury*** in respect of any period during which the ***employee*** is imprisoned in connection with their conviction of an offence. | ***SRC Act***: sections 19-21A and subsection 23(2). |
| 16.4 | Injury results in death of an ***employee*** who does not leave ***dependants***.  (Permanent preclusion.) | If both of the following are true:   * the ***employee***dies without leaving ***dependants***; and * the death occurred before any amount of compensation was payable under a ***determination***,   then compensation is not payable under the Comcare Scheme in respect of the ***injury*** that resulted in the death of the ***employee*** (except in relation to ***medical treatment*** expenses, certain transport costs and funeral expenses). | See [Survival of Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#SOC), including for where any amount of compensation was payable under a ***determination*** before death.  ***SRC Act***: sections 16-18. |
| 16.5 | Refuse or fail to undergo, or obstruct, an examination for a ***rehabilitation assessment***.  (Temporary suspension and preclusion.) | If both of the following are true:   * the ***rehabilitation authority*** requires an ***employee*** to undergo an examination for the purpose of a ***rehabilitation assessment***; and * the ***employee*** refuses or fails, without reasonable excuse, to undergo the examination, or in any way obstructs the examination,   then the ***employee's*** rights to both of the following:   * compensation (other than for the cost of ***medical treatment***) under the Comcare Scheme; and * institute or continue any proceedings under the scheme in the Administrative Appeals Tribunal in relation to compensation,  are suspended until the examination takes place, and compensation is not payable in respect of the period of the suspension | ***SRC Act***: section 36. |
| 16.6 | Refuse or fail to undertake a ***rehabilitation program***.  (Temporary suspension and preclusion.) | If an ***employee*** refuses or fails, without reasonable excuse, to undertake a ***rehabilitation program*** provided for the ***employee***, the ***employee's*** rights to both of the following:   * compensation (other than for the cost of ***medical treatment***) under the Comcare Scheme; and * institute or continue any proceedings under the scheme in the Administrative Appeals Tribunal in relation to compensation,  are suspended until the ***employee*** begins to undertake the program, and compensation is not payable in respect of the period of the suspension. | ***SRC Act***: section 37. |
| 16.7 | Revocable election to receive compensation under the Veterans' Entitlements Act 1986 (Cth).  (Suspension and preclusion.) | An election (that may be revoked) may be made by a person with entitlements under the Comcare Scheme the [Veterans' Entitlements Act 1986](http://www.austlii.edu.au/au/legis/cth/consol_act/vea1986261/index.html) (Cth)—compensation is not payable during the period of the election. | See [Veterans' Entitlements Act 1986](http://austlii.community/foswiki/ACTLawHbk/VeteransEntitlementsAct1986).  ***SRC Act***: section 43. |
| 16.8 | Irrevocable election to sue for ***damages*** for ***non-economic loss***.  (Permanent limited preclusion.) | At any time before the first amount of ***permanent impairment*** or ***non-economic loss*** compensation is paid to an ***employee***, the ***employee*** may make an election (that cannot be revoked) to sue their employer, or another employee of that employer, for ***damages*** for that ***non-economic loss***—***permanent impairment*** and ***non-economic loss*** compensation is not payable under the Comcare Scheme after the election is made. | ***SRC Act***: section 45. |
| 16.9 | Recovery of ***damages*** by ***employee*** or ***dependant***.  (Permanent preclusion after 30/11/1988.) | Compensation is not payable under the Comcare Scheme (all of the following apply):   * to an ***employee*** in respect of an ***injury*** after the date on which ***damages*** were recovered by the ***employee*** in respect of the ***injury***; * to an ***employee*** in respect of the loss or destruction of, or damage to, ***property used by the employee***, after the date on which ***damages*** were recovered by the ***employee*** in respect of the loss, destruction or damage; and * to, or for the benefit of, a ***dependant*** of an ***employee*** in respect of the death of the ***employee***, after the date on which ***damages*** were recovered by, or for the benefit of, the ***dependant*** in respect of the death,   unless the ***damages*** were recovered in any of the following circumstances:   * by the ***employee*** in an ***action for non-economic loss***—no preclusion because the ***employee*** will have elected not to receive compensation under the scheme for ***permanent impairment*** and ***non-economic loss***; * by the ***employee*** or ***dependant*** as a result of a claim to recover ***damages*** from a third party that is made, or taken over, by the ***relevant authority*** (also called a subrogation claim)—the ***employee*** or ***dependant*** is not entitled to further compensation under the scheme until the amount of compensation that would have been payable equals the amount of ***damages*** paid to the ***employee*** or ***dependant***; * by the ***employee*** or ***dependant*** before 01/12/1988—the preclusion provisions in section 99 of the ***1971 Act*** apply; or * by the ***employee*** or ***dependant*** after 30/11/1988 in respect of a claim for ***damages*** made before that day—a modified version of the preclusion provisions in section 99 of the ***1971 Act*** apply. | See the following:   * Note 1 for the right to sue; and * Note 2 for when ***damages*** are taken to be recovered.   ***SRC Act***: sections 4, 10, 48, 124.  ***1971 Act***: section 99. |
| 16.10 | Recovery of ***damages*** by ***employee*** or ***dependant***.  (Repayment.) | If any compensation was paid under the Comcare Scheme (all of the following apply):   * to an ***employee*** in respect of an ***injury***, and the ***employee*** later recovers ***damages*** in respect of that ***injury***; * to an ***employee*** in respect of an the loss or destruction of, or damage to, ***property used by the employee***, and the ***employee*** later recovers ***damages*** in respect of that loss, destruction or damage; and * to, or on behalf of, a ***dependant*** of a deceased ***employee*** respect of the ***injury*** that resulted in the death of the ***employee***, and the ***dependant*** later recovers ***damages*** in respect of the death,   then the ***employee*** or ***dependant***, as the case may be, must pay to the ***relevant authority*** the lesser of:   * the amount of that compensation; * the amount of the ***damages***; or * the amount of the ***damages*** that the ***employee*** or ***dependant*** establishes (to the satisfaction of the ***relevant authority***) relates to the ***injury***, loss, destruction or damage in respect of which compensation is payable under the scheme,   unless the ***damages*** were recovered in any of the following circumstances:   * by the ***employee*** in an ***action for non-economic loss***—no repayment because the ***employee*** will have elected not to receive compensation under the scheme for ***permanent impairment*** and ***non-economic loss***; * as a result of a claim to recover ***damages*** from a third party that is made, or taken over, by the ***relevant authority*** (also called a subrogation claim)—no repayment but the ***employee*** or ***dependant*** is not entitled to further compensation under the scheme until the amount of compensation that would have been payable equals the amount of ***damages*** paid to the ***employee*** or ***dependant***; * by the ***employee*** or ***dependant*** before 01/12/1988—the repayment provisions in section 99 of the ***1971 Act*** apply; or * by the ***employee*** or ***dependant*** after 01/12/1988 in respect of a claim for ***damages*** made before that day—a modified version of the repayment provisions in section 99 of the ***1971 Act*** apply. |
| 16.11 | Recovery of ***damages*** by a ***dependant*** not claiming compensation.  (Repayment.) | If both of the following are true:   * a ***dependant*** of a deceased ***employee*** who has not made a claim for compensation under the Comcare Scheme recovers ***damages*** in respect of the ***employee's*** death (that is, a ***dependant*** not claiming compensation); and * a ***dependant*** of a deceased ***employee*** has made a claim for compensation under the scheme and compensation is payable to that ***dependant*** under the scheme in respect of the ***injury***resulting in the death of the ***employee*** (that is, a ***dependant*** entitled to compensation),   then the ***dependant*** not claiming compensation must pay to the ***relevant authority*** the lesser of:   * the amount of the ***damages***; * that ***dependant's*** share of the amount of the ***damages*** (if there was more than one ***dependant*** not claiming compensation who recovered ***damages*** in respect of the ***employee's*** death); or * the prescribed amount,   where the prescribed amount is the amount of compensation payable under the scheme to, or for the benefit of, every ***dependant***entitled to compensation, subject to all of the following:   * the amount does not include any amount of compensation payable to a ***dependant*** entitled to compensation who, for whatever reason, is not entitled to recover ***damages*** in respect of the death of the ***employee*** (for example, due to a statute of limitations); * the amount does not include any weekly dependency payments payable to a ***prescribed child***; and * if a ***dependant*** entitled to compensation also recovered ***damages*** in respect of the ***employee's*** death—the amount must be reduced by any amount that that ***dependant*** is liable to pay to the ***relevant authority*** under the preceding recovery provision (at [16.10]). | See Note 2, for when ***damages*** are taken to be recovered.  See [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID).  ***SRC Act***: sections 4, 10 and 49. |
| 16.12 | Fail to comply with a reasonable requirement in relation to a subrogation claim.  (Temporary suspension and preclusion.) | If both of the following are true:   * the ***relevant authority*** makes, or takes over, a claim to recover ***damages*** from a third party (also called a subrogation claim); and * the ***employee*** or ***dependant*** fails to comply with any reasonable requirement of the ***relevant authority*** for the purposes of the claim,   then:   * the ***employee's*** rights to compensation (other than for the cost of ***medical treatment***) under the Comcare Scheme in respect of the ***injury*** to which the claim relates; * the ***employee's*** rights to compensation under the scheme in respect of the loss, destruction or damage to ***property used by the employee*** to which the claim relates; and * the ***dependant's***rights to compensation under the scheme in respect of the death to which the claim relates,  are suspended until the ***employee*** or ***dependant***, as the case may be, complies with the requirement, and compensation is not payable in respect of the period of the suspension | ***SRC Act***: section 50 |
| 16.13 | Irrevocable election to receive compensation under the Comcare Scheme or under an award, determination, order or agreement.  (Permanent preclusion.) | An ***employee*** who would be entitled to compensation under the Comcare Scheme and under an award, determination or order made, or agreement entered into, under either:   * a ***law of the Commonwealth*** relating to workplace relations; or * a law of a State or Territory,   cannot receive compensation under both and must make an election (that cannot be revoked) and the election:   * has no effect if the ***employee*** is ultimately not entitled to receive compensation either under the scheme or under an award, determination, order or agreement; and * does not affect entitlements of ***dependants*** of the ***employee*** under the scheme. | ***SRC Act***: section 52. |
| ﻿16.14 | Refuse or fail to undergo, or obstruct, a ***medical examination***.  (Temporary suspension and preclusion.) | If all of the following are true:   * the ***relevant authority*** has received a valid notice or valid claim for compensation under the Comcare Scheme; * the ***relevant authority*** requires an ***employee*** to undergo a ***medical examination***; * if the ***employee*** was previously required to undergo such an examination—the minimum interval between such examinations specified in a legislative instrument has lapsed; and * the ***employee*** refuses or fails, without reasonable excuse, to undergo the examination, or in any way obstructs the examination,   then the ***employee's*** rights to both of the following:   * compensation (including for the cost of ***medical treatment***) under the scheme; and * institute or continue any proceedings under the scheme in the Administrative Appeals Tribunal in relation to compensation,  are suspended until the examination takes place, and compensation is not payable in respect of the period of the suspension. | See one of the following for the minimum interval between ***medical examinations***:   * Notice of Declarations and Specifications(made on 28/11/1988, published in [Gazette S365](https://www.legislation.gov.au/file/1988GN46) on 30/11/1988, and amended by Notice No 1 of 1989, published in in [Gazette GN 32](https://www.legislation.gov.au/file/1989GN32) on 23/08/1989), for requirements made after 30/11/1988 and before 01/07/2007; or * [Safety, Rehabilitation and Compensation (Declaration and Specification) Notice 2007 (1)](https://www.legislation.gov.au/Details/F2017C01214), for requirements made after 30/06/2007 and before 01/10/2017.   ***SRC Act***: section 57. |
| ﻿16.15 | ﻿Refuse or fail to comply with a request for relevant information or a relevant document.  (Temporary suspension.) | If all of the following are true:   * the ***relevant authority*** has received a valid claim for compensation under the Comcare Scheme; * the ***relevant authority*** has given the ***claimant*** a written request for information or a document that is relevant to the claim; and * the ***claimant*** refuses or fails, without reasonable excuse, to comply with the request within 28 days after the date of the written request,   then the ***relevant authority*** may either:   * refuse to deal with the claim until the ***claimant*** complies with the request; or * continue dealing with the claim,   but if the ***relevant authority*** continues to deal with the claim and all of the following are true:   * the ***relevant authority*** makes a ***determination*** in relation to the claim; * the ***relevant authority*** makes a ***reviewable decision***following a reconsideration of the ***determination***; * an application for review of the ***reviewable decision*** is made to the Administrative Appeals Tribunal; * the ***claimant*** later discloses the information, or gives the document (or a copy of the document), to the ***relevant authority*** or the Tribunal; and * the ***relevant authority*** would have made a more favourable ***determination*** or ***reviewable decision*** if it had the information or document when making the ***determination*** or***reviewable decision***, as the case may be,   then both of the following apply:   * the information or document (or copy of the document) may not be admissible as evidence in the proceeding; and * in certain circumstances, legal costs may not be payable by the ***relevant authority*** to the ***claimant*** in relation to the proceeding. | If the ***claimant*** is unable to:   * obtain and/or provide the requested information or document within 28 days—the ***claimant*** may request an extension of time to comply with the request (which the ***relevant authority*** may or may not grant, depending on the reasons); or * obtain and provide the requested information or document (or a copy of the document) without unreasonable expense or inconvenience—the ***claimant*** should notify the ***relevant authority*** as soon as possible.   ***SRC Act***: sections 58, 66 and 67. |
| 16.16 | Recovery of ***State workers' compensation***.  (Permanent preclusion.) | Compensation is not payable under the Comcare Scheme:   * if an ***employee*** recovers ***State workers’ compensation*** in respect of an ***injury***—to the ***employee*** in respect of that ***injury***; * if an ***employee*** recovers ***State workers’ compensation*** in respect of the loss or destruction of, or damage to, ***property used by the employee***—to the ***employee*** in respect of that loss, destruction or damage; or * if ***State workers’ compensation*** is recovered by, or on behalf of, a ***dependant*** of a deceased ***employee***—to, or for the benefit of, the ***dependant*** in respect of the ***injury*** that resulted in the death. | ***SRC Act***: section 118. |
| 16.17 | Recovery of ***State workers' compensation***.  (Repayment.) | If any compensation was paid under the Comcare Scheme:   * to an ***employee*** in respect of an ***injury***, and the ***employee*** later recovers ***State workers’ compensation*** in respect of that ***injury***; * to an ***employee*** in respect of an the loss or destruction of, or damage to, ***property used by the employee***, and the ***employee*** later recovers ***State workers’ compensation*** in respect of that loss, destruction or damage; or * to, or on behalf of, a ***dependant*** of a deceased ***employee*** and the ***dependant*** later recovers ***State workers' compensation*** in respect of the ***injury*** that resulted in the death,   then the ***relevant authority*** may recover the scheme compensation from the ***employee*** or ***dependant***, as the case may be, in a court as a debt. |
| 16.18 | Refuse or fail to give statutory declaration.  (Temporary suspension and preclusion.) | If a ***claimant*** refuses or fails, without reasonable excuse, to give a statutory declaration concerning whether the ***claimant*** has been paid ***State workers' compensation*** in respect of the ***injury***, or loss or destruction of, or damage to ***property used by the employee***, to which the claim relates, then the ***claimant's*** rights to both of the following:   * compensation under the Comcare Scheme in respect of the ***injury***, loss, destruction or damage to which the claim relates; and * institute or continue any proceedings under the scheme in the Administrative Appeals Tribunal in relation to that compensation,  are suspended until the statutory declaration is given, and compensation is not payable in respect of the period of the suspension. |
| ﻿16.19 | Recovery of ***State compensation***.  (Temporary preclusion.) | If ***State compensation*** is recovered:   * by an ***employee*** in respect of an ***injury***; * by an ***employee*** in respect of the loss or destruction of, or damage to, ***property used by the employee***; or * by, or on behalf of, a ***dependant*** of a deceased ***employee***,   then the compensation payable under the Comcare Scheme in respect of the ***injury***, loss, destruction, damage or death is the amount that exceeds the amount of ***State compensation*** recovered by the ***employee*** or by, or for the benefit of, the ***dependant***, as the case may be. | See one of the following to assess whether ***State compensation*** was recovered under a specified law:   * Notice of Declarations and Specifications(made on 28/11/1988, published in [Gazette S365](https://www.legislation.gov.au/file/1988GN46) on 30/11/1988, and amended by Notice No 1 of 1989, published in in [Gazette GN 32](https://www.legislation.gov.au/file/1989GN32) on 23/08/1989) for compensation recovered after 30/11/1988 and before 01/07/2007; * [Safety, Rehabilitation and Compensation (Specified Law) Notice 2007 (1)](https://www.legislation.gov.au/Series/F2007L02004) for compensation recovered after 30/06/2007 and before 20/10/2017; or * [Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017](https://www.legislation.gov.au/Series/F2017L01212) for compensation recovered after 19/09/2017.   ***SRC Act***: section 119. |
| 16.20 | Recovery of ***State compensation***.  (Repayment) | If compensation was paid under the Comcare Scheme:   * to an ***employee*** in respect of an ***injury***, and the ***employee*** later recovers ***State compensation*** in respect of that ***injury***; * to an ***employee*** in respect of an the loss or destruction of, or damage to, ***property used by the employee***, and the ***employee*** later recovers ***State compensation*** in respect of that loss, destruction or damage; or * to, or on behalf of, a ***dependant*** of a deceased ***employee*** and the ***dependant*** later recovers ***State compensation*** in respect of the ***injury*** that resulted in the death,   then the ***employee*** or ***dependant***, as the case may be, must pay to the ***relevant authority*** the lesser of:   * the amount of that compensation (not including any weekly dependency payments paid in relation to a ***prescribed child***); * the amount of the ***State compensation***; or * the amount of the ***State compensation*** that the ***employee*** or ***dependant*** establishes (to the satisfaction of the ***relevant authority***) relates to the ***injury***, loss, destruction or damage in respect of which compensation is payable under the scheme. |
| **Note 1:** The general right of an ***employee*** to institute an action or other proceeding for ***damages*** against (that is, the general right to sue) their ***scheme employer****,*or another an employee of that employer, in respect of an ***injury*** sustained by the ***employee*** in the course of their employment was abolished when the Comcare Scheme commenced on 01/12/1988. However:   * if an ***injury*** results in the ***employee's*** death, the ***employee's dependants*** are not prevented by the Comcare Scheme from making a claim for ***damages*** in respect of the death; * the scheme does not prevent an ***employee*** from making a claim for ***damages*** in respect of an ***injury*** that was not sustained by the ***employee*** in the course of their employment; and * the scheme does not prevent an ***employee*** or their ***dependants*** making a claim to recover ***damages*** from a third party.   There are strict time limits that apply to most claims for ***damages*** and the rules can vary between States and Territories. In addition, the scheme has strict liability criminal offences in relation to the failure to notify the ***relevant authority*** of a claim for ***damages*** and recovery of ***damages***. Independent legal advice should be sought at the earliest opportunity. | | | |
| **Note 2:** For the purposes of the Comcare Scheme, ***damages***are taken to have been recovered by an ***employee***, or by or for the benefit of a ***dependant*** of a deceased ***employee***, when the amount of the ***damages*** was paid to or for the benefit of the ***employee*** or ***dependant***, as the case may be. | | | |

Recovery of Overpayments

An amount of compensation that has been paid under the Comcare Scheme to a person may be recovered as a debt if the amount was paid in consequence of:

* a false statement or representation;
* a misleading statement or representation; or
* a failure or omission to comply with a provision of the ***SRC Act***.

An amount of compensation that has been paid under the scheme to a person may also be recovered as a debt if the amount should not have been paid. This does not include an amount the ***relevant authority*** is entitled to recover from the administrator of a ***superannuation scheme*** as a result of an overpayment to a retired ***employee***.

The ***relevant authority*** may do any of the following in relation to the debt:

* recover the debt from the person in a court;
* deduct the amount of the debt from any other amount of compensation payable under the scheme to, or for the benefit of, that person;
* write off the debt (however the debt still exists and may be recovered later);
* waive the debt in part (the waived part of the debt effectively ceases to exist, the balance may be recovered later); or
* waive the debt in whole (the debt effectively ceases to exist).

A decision to write off or waive a debt is not a ***determination*** and therefore not subject to reconsideration by the ***relevant authority*** or review by the Administrative Appeals Tribunal.

***SRC Act***: sections 114-114D.

[ [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID) | [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID) | [Accident Not Causing Injury](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ANCI) | [Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NEC) ]

﻿﻿Notice of Injury or Accident

This section contains a summary of provisions relating to the giving of notice under the Comcare Scheme.

The following information may help you answer these questions:

*Has valid notice of the****injury****been given to the****relevant authority****?  
Has valid notice of the accident been given to the****relevant authority****?*

The scheme does not apply in relation to an ***injury*** to an ***employee*** unless notice of the ***injury*** is given to the ***relevant authority.***

Similarly, the scheme does not apply in relation to the loss or destruction of, or damage to, ***property used by an employee*** unless notice of the accident that resulted in the loss, destruction or damage is given to the ***relevant authority***.

There is no prescribed form for the notice, but it must be in writing. In some cases, a valid claim for compensation also constitutes valid notice (see [Claims for Compensation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#CFC)).

The notice must also be given to the ***relevant authority*** as soon as practicable after the ***employee*** became aware of the ***injury*** or accident. The notice may be given by means of an electronic communication.

If the ***employee*** died before they became aware of the ***injury*** or accident, or before it was practicable to give a written notice, the notice must be given to the ***relevant authority*** as soon as practicable after the ***employee*** died.

If the notice was not given notice as soon as practicable, the scheme may still apply if any of the following can be established:

* the ***relevant authority*** would not be prejudiced if the notice were treated as a sufficient notice; or
* the failure resulted from any of the following:  
    
  + the death of a person;
  + the absence from Australia of a person;
  + ignorance or a mistake; or
  + any other reasonable cause.

The notice requirements under the ***1930 Act***, and the ***1971 Act*** as in force before 01/07/1986, were substantially different in that they imposed timeframes and did not allow ignorance of the requirements as an excuse. The ***1930 Act*** did not expressly provide compensation for ***property used by an employee***.

In light of the above, you should give a written notice of the ***injury*** or accident to the ***relevant authority*** as soon as possible. If you gave the notice to your ***scheme employer*** instead, ask your employer to forward the notice to the ***relevant authority*** if it has not already done so.

***SRC Act***: section 53.

[ [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID) | [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID) | [Accident Not Causing Injury](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ANCI) | [Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NEC) ]

﻿Claims for Compensation

This section contains a summary of provisions relating to claims for compensation under the Comcare Scheme.

The following information may help you answer the question:

*Has a valid claim for compensation been given to the****relevant authority****?*

A claim for compensation must comply with certain requirements to be valid and before it can be considered by the ***relevant authority.***

The claim for compensation must be:

* in writing;
* made by giving it to the ***relevant authority***;
* in accordance with the form approved by Comcare, or in another form that substantially complies with the approved form; and
* accompanied by a certificate from a legally qualified medical practitioner in accordance with the form approved by Comcare (except where the claim is for compensation for ***medical treatment***, a death benefit or dependency payments), or in another form that substantially complies with the approved form.

The claim for compensation may be given by means of an electronic communication.

Compensation is not payable to a person under the scheme unless a valid claim for compensation is made by or on behalf of that person.

There may be different forms for claiming different types of compensation. For a list of forms approved by Comcare, see [comcare.gov.au](http://www.comcare.gov.au/Forms_and_Publications/forms2/claims_forms2).

The current approved initial claim for compensation form for an ***injury*** indicates that you should complete the form with your ***scheme employer***. In some cases, this may not be possible so you should contact the ***relevant authority*** for guidance on how to make a valid claim for compensation.

***SRC Act***: section 54.

Types of Claims

An initial claim for compensation can be for a declaration of liability (***injury*** claims only).

For example, you may ask the ***relevant authority*** to make a ***determination*** that it is liable to pay compensation under the Comcare Scheme in respect of an ***injury*** suffered by an ***employee*** because the ***injury*** results in ***incapacity for work***, ***impairment***or death.

Alternatively, an initial claim for compensation can be for one or more forms of compensation under the scheme.

Some forms of compensation have pre-conditions (for example, an ***employee*** must be undertaking a ***rehabilitation program*** before they are entitled to compensation for an aid or appliance) but others do not. For more information, see [Compensation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#COMP).

If an initial claim for compensation was limited to a request for a declaration of liability, a further claim for one or more forms of compensation can subsequently be made. This can be done before or after the ***relevant authority*** has made a ***determination*** in relation to the initial claim.

A claim for compensation can be made by, or on behalf of, any of the following:

* an ***employee***;
* a ***dependant*** of a deceased ***employee***; or
* a service provider.

If a claim for compensation is made on behalf of another person, the person making the claim will need to establish that they have legal authority to make the claim.

﻿Survival of Claims

If a person who is entitled to make a claim for compensation under the Comcare Scheme dies without making a claim, the right to make a claim survives, subject to the following:

* if the claim was for ***non-economic loss*** compensation—the right to make the claim does not survive; and
* if the claim was for any other form of compensation, including ***permanent impairment*** compensation—the claim may be made by the deceased person's legal personal representative.

If a person who has made a valid claim for compensation under the scheme dies after the claim is served, the claim survives, subject to the following:

* if the claim was for ***non-economic loss*** compensation—the claim does not survive;
* if the claim was for any other form of compensation, including ***permanent impairment*** compensation—the claim is not affected by the person's death; and
* the claimant is taken to be the person's legal personal representative.

A legal personal representative may be a person who is, for example, an executor of the deceased person's will or the administrator of the deceased person's estate.

Subject to the following, if a claim for compensation has survived, and an amount of compensation is subsequently payable under a ***determination***, the amount of compensation forms part of the deceased person's estate.

If the deceased person was an ***employee***who suffered an ***injury*** that resulted in death and who did not leave ***dependants***:

* if the death occurred before any amount of compensation was payable under a ***determination***—compensation is not payable under the scheme in respect of the ***injury*** that resulted in the death of the ***employee*** (except in relation to ***medical treatment*** expenses, certain travel costs and funeral expenses); or
* the death occurred after any amount of compensation was payable under a ***determination***—that amount of compensation remains payable and forms part of the deceased ***employee's*** estate.

If the deceased person died intestate (and there is no other person apparently entitled to claim the deceased person's estate, including the amount of compensation payable under a ***determination***), then the amount of compensation is either:

* paid to the Commonwealth (if the ***relevant authority*** is Comcare or a ***licensed authority***); or
* payable in accordance with applicable State or Territory laws concerning intestacy (if the ***relevant authority*** is a ***licensed corporation***).

***SRC Act***: sections 16-18, 27, 55 and 111.

Requesting Claim Documents

A ***claimant*** may request any document held by the ***relevant authority*** that relates to the ***claimant's*** claim for compensation without charge by the ***relevant authority***.

This right may exercised at any time before or after a ***determination*** is made, and is in addition to any right under the [Freedom of Information Act 1982](http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/index.html) (Cth) (see [What is Freedom of Information?](http://austlii.community/foswiki/ACTLawHbk/WhatisFOI)).

A request should be in writing to avoid confusion over what is being requested, when the request was made and by whom.

The ***relevant authority*** must comply with the request.

***SRC Act***: section 59.

[ [Injury Not Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#INRID) | [Injury Resulting in Death](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#IRID) | [Accident Not Causing Injury](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ANCI) | [Non-Employee/Dependant Claims](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NEC) ]

﻿Investigation and Determination

This section contains a summary of provisions relating to the investigation and determination of claims for compensation under the Comcare Scheme.

Investigation of Claim

Once a valid claim for compensation has been made under the Comcare Scheme, the ***relevant authority*** must make a ***determination*** in relation to the claim.

Before making a ***determination***, the ***relevant authority*** may undertake investigations. For example, it may:

* request relevant information or a relevant document from:  
    
  + the ***claimant***(there may be consequences if a ***claimant*** refuses or fails, without reasonable excuse, to comply with certain written requests in a specified time (see [Preclusion, Suspension and Repayment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#REQUEST_SUM));
  + the ***employee's scheme employer*** and/or current employer;
  + the ***employee's*** treating medical practitioner; and
  + any relevant third party or insurer; and
* arrange for a ***medical examination*** of the ***employee***(see [Preclusion, Suspension and Repayment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ME_SUM) for possible consequences if the ***employee*** refuses or fails, without reasonable excuse, to undergo the examination, or in any way obstructs the examination).

In some cases, the ***relevant authority*** may make a ***determination***without undertaking the above investigations.

In all cases, the ***relevant authority***:

* must make a ***determination*** accurately and quickly in relation to a valid claim for compensation;
* must be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities;
* is not required to conduct a hearing; and
* is not bound by the rules of evidence.

In addition, some ***relevant authorities*** are required to comply with the Commonwealth's model litigant obligations, which include the requirement to deal with claims promptly and not cause unnecessary delay in the handling of claims (see sections 4 and 12, and Appendix B, of the [Legal Services Directions 2017](https://www.legislation.gov.au/Series/F2017L00369) (Cth)).

Whilst there may be a duty to make a ***determination*** quickly, there is no timeframe in which the ***determination*** must be made. If there is an unreasonable delay, there may be options (see [Other Forms of Review and Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#OFOR)).

***SRC Act***: sections 69, 72, 108E

Decision on Claim (Determination)

A ***relevant authority*** or ***rehabilitation authority*** that makes a ***determination*** must give the ***claimant*** the following in writing:

* the terms of the ***determination***;
* the reasons for the ***determination***, which must set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based; and
* a notice of rights stating the ***claimant*** may a request a reconsideration of the ***determination***,unless the ***determination*** is that the full cost of ***medical treatment*** obtained by an ***employee*** is payable to a person other than the ***employee***.

If the ***relevant authority*** makes a ***determination***:

* that an amount of ***permanent impairment*** compensation is payable—the amount must be paid to the ***employee*** within 30 days, otherwise interest is payable on the amount (unless the ***determination*** of the amount is challenged);
* that any other amount of compensation is payable—the ***relevant authority*** must make the payment accurately and quickly; or
* denying liability under the scheme in respect of a claimed injury, loss, destruction, damage or death—all claims for compensation made by the ***claimant*** in relation to that injury, loss, destruction, damage or death are taken to be denied.

***SRC Act***: sections 13, 26, 61, 91 and 108E.

﻿Right of Appeal (Reconsideration)

If a ***claimant*** is unhappy with a ***determination***, they may request that the ***relevant authority*** reconsider the ***determination*** (including if it was made by the ***rehabilitation authority***).

The ***employee's scheme employer*** may also request a reconsideration if that employer is affected by the ***determination***.

For a request to be valid:

* it should be in writing (and must be in writing if the ***determination*** was made by a ***rehabilitation authority*** other than a ***relevant authority***);
* it must set out the reasons for the request—generally, this will include the identification of any apparent errors of fact, or errors of law, in the ***determination*** or the reasons for the ***determination***; and
* it must be given to the ***relevant authority*** within 30 days after the day on which the ***determination*** first came to the notice of the person making the request—but if the ***claimant*** is or was unable to make the request within 30 days, they may request an extension of time to make the request.

Whilst the ***relevant authority*** has the power to extend the 30-day period, either before or after it has expired, the power is discretionary. The ***relevant authority*** will therefore expect reasons for needing more time, or reasons for the delay, as the case may be. A decision by the ***relevant authority*** refusing to extend the 30-day period is usually a ***reviewable decision*** (see [Right of Appeal (Merits Review)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ROAMR)).

***SRC Act***: section 62.

Other Decisions

Some decisions under the Comcare Scheme are not ***determinations***.

For example, there are several provisions that operate to suspend rights and entitlements under the scheme (see [Preclusion, Suspension and Repayment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#EPAS)).

A person's rights and entitlements may be suspended if, for example, they:

* refused or failed, without reasonable excuse, to undergo an examination under the ***SRC Act***;
* in any way obstructed an examination under the ***SRC Act***;
* failed to comply with requirement under the ***SRC Act***; or
* failed to provide a statutory declaration in response to a request under the ***SRC Act***.

In these cases, the ***relevant authority*** is required to consider whether an excuse was reasonable, or whether the person in fact did or did not do something, in deciding whether or not the suspension provision applies.

If the ***relevant authority*** states that a person's rights and entitlements are suspended due to a self-executing decision that is not a ***determination***, you may ask the ***relevant authority*** to make a ***determination*** in relation to any valid claim for compensation that has been made, or that is subsequently made.

If the ***relevant authority*** makes a ***determination*** denying liability on the basis of a suspension provision, a request for reconsideration may be made in relation that ***determination***.

The reasons for the request may include, for example, that the person's excuse was reasonable, or that the person did not fail to comply with a requirement, as the case may be.

﻿Reconsideration

This section contains a summary of provisions relating to the reconsideration of a ***determination*** by the ***relevant authority*** under the Comcare Scheme.

Reconsideration of Determination

The ***relevant authority*** must reconsider a ***determination*** (or have it reconsidered by a delegate) on receipt of a valid request for reconsideration (see [Right of Appeal (Reconsideration)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ROA)).

A ***relevant authority***may also reconsider its own ***determination*** (or have it reconsidered by a delegate) at any time. That is, it may initiate a reconsideration on own motion whether or not:

* the ***claimant*** has requested a reconsideration; or
* proceedings in the Administrative Appeals Tribunal have commenced or concluded in relation a ***reviewable decision*** concerning the ***determination.***

Whilst the ***relevant authority*** must reconsider a ***determination*** or have it reconsidered on receipt of a valid request, there is no timeframe in which the ***determination*** must be reconsidered. If there is an unreasonable delay, there may be options (see [Other Forms of Review and Assistance](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#OFOR)).

Decision on Reconsideration (Reviewable Decision)

The ***relevant authority*** or delegate that makes a ***reviewable decision*** must give the ***claimant*** the following in writing:

* the terms of the ***reviewable decision***;
* the reasons for the ***reviewable decision***, which must set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based; and
* a notice of rights stating the ***claimant*** may apply to the Administrative Appeals Tribunal for review of the ***reviewable decision***.

The ***reviewable decision*** may do any of the following:

* affirm the ***determination***;
* revoke the ***determination***; or
* vary the ***determination*** in such manner as the ***relevant authority*** or delegate thinks fit.

***SRC Act***: sections 62 and 63.

﻿﻿﻿Right of Appeal (Merits Review)

If a ***claimant*** is unhappy with a ***reviewable decision***, they may apply to have the decision reviewed by the Administrative Appeals Tribunal (General Division).

The ***employee's scheme employer*** may also to have the ***reviewable decision*** reviewed if that employer is affected by the decision.

Note that an application for review can only be made in relation to a ***reviewable decision*** and not a ***determination***. In other words, you must first go through the reconsideration process (see [Right of Appeal (Reconsideration)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ROA)).

The application for review must:

* be in writing (by completing an online application, completing an application form, writing a letter or sending an email);
* contain a statement of the reasons for the application; and
* be lodged with the Tribunal within 60 days of the day on which the ***reviewable decision*** was given to the ***claimant***.

There is no fee for lodging an application for review in relation to a ***reviewable decision*** under the Comcare Scheme.

The Tribunal may extend the time for lodging an application for review of the ***reviewable decision*** if both of the following are true:

* the ***claimant*** applies for an extension of time in writing; and
* the Tribunal is satisfied that it is reasonable in all the circumstances to do so.

The Tribunal's website contains useful information regarding making an application for review and an application for extension of time (see [aat.gov.au](http://www.aat.gov.au/applying-for-a-review)).

If you need assistance in relation to an application for review, you can contact:

* the Tribunal: [aat.gov.au](http://www.aat.gov.au/contact-us);
* the ACT Law Society: [actlawsociety.asn.au](https://www.actlawsociety.asn.au/about/contact); or
* the Legal Aid Commission (ACT): [legalaidact.org.au](https://www.legalaidact.org.au/contact-legal-aid).

For more information, see [section 29](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s29.html) of the [Administrative Appeals Tribunal Act 1975](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/index.html) (Cth).

***SRC Act***: sections 64 and 65.

﻿Merits Review

This section contains a summary of provisions relating to the review of a ***reviewable decision*** by the Administrative Appeals Tribunal under the Comcare Scheme.

Proceedings in the Administrative Appeals Tribunal

For information about how to commence a proceeding in the Administrative Appeals Tribunal, see [Right of Appeal (Merits Review)](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ROAMR).

Parties to the Proceeding

The parties to a proceeding before the Administrative Appeals Tribunal are the ***claimant*** (called the 'applicant') and the ***relevant authority*** (called the 'respondent').

If the ***employee's scheme employer*** applied to have the ***reviewable decision*** reviewed, that employer will also be a party to the proceeding.

***SRC Act***: section 60.

Steps in the Proceeding

The steps in the proceeding are governed by the Tribunal's legislation, practice directions published by the president of the Tribunal and specific directions given by conference registrars and members of the Tribunal.

The usual steps may include:

* the Tribunal acknowledges the application for review;
* a preliminary hearing is listed (if required, to resolve preliminary issues such as an application for extension of time);
* the ***relevant authority*** provides the ***claimant*** and Tribunal with a statement of reasons and all documents relevant to the ***reviewable decision*** (called the 'Section 37' or 'T' documents) within 28 days of being notified of the application;
* the Tribunal reaches out to the ***claimant*** if they are self-represented;
* one or more preliminary conferences are listed (to clarify the ***reviewable decision,***the reasons for the decision, the issues in dispute, and what further evidence may be required before a final hearing);
* a return of summons hearing is listed (if the Tribunal has summonsed a third party to produce information of documents, usually on request by a party to the proceeding);
* a conciliation conference (or another form of dispute resolution process, such as mediation, case appraisal or neutral evaluation) is listed to help the parties reach informal agreement;
* a directions hearing is listed (if required, to ensure the matter is ready for final hearing); then
* a final hearing is listed.

If the application proceeds to a final hearing, the Tribunal (comprising one or more members) will review the merits of the ***reviewable decision*** from the beginning. That is, the Tribunal will stand in the shoes of the decision-maker and decide all relevant facts and questions of law.

It can take 12 months or more to resolve an application for review.

For more information in relation to the steps in a review proceeding, see [aat.gov.au](http://www.aat.gov.au/steps-in-a-review/overview-of-the-review-process).

Duty to Assist the Tribunal

In a proceeding before the Tribunal:

* the ***relevant authority*** must use its best endeavours to assist the Tribunal to make its decision in relation to the proceeding;
* a party to the proceeding, and any person representing such a party, must use their best endeavours to assist the Tribunal to fulfil the Tribunals' objectives (that is, to provide a mechanism of review that is accessible, fair, just, economical, informal, quick, proportionate to the importance and complexity of the matter, and that promotes public trust and confidence in the decision-making of the Tribunal); and
* some ***relevant authorities*** are required to comply with the Commonwealth's model litigant obligations.

For more information, see:

* [section 2A](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s2a.html) and [33](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s33.html)(1AA) and [33](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s33.html)(1AB) of the [Administrative Appeals Tribunal Act 1975](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/index.html) (Cth); and
* [sections 4](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s4.html) and [12](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s12.html), and Appendix B, of the [Legal Services Directions 2017](https://www.legislation.gov.au/Series/F2017L00369) (Cth).

Bring Forward Evidence 28 Days Before Hearing

If a ***claimant*** wants to bring forward any matter in evidence before the Tribunal in the proceeding, they need to do so at least 28 days before the first day of the final hearing.

Otherwise, the ***claimant*** will need to ask the Tribunal for permission to bring forward that matter in evidence in the proceeding.

If permission is not granted, that matter is not able to be considered by the Tribunal as part of the evidence.

***SRC Act***: section 66.

Some Evidence May Not Be Considered

A ***claimant*** will need to ask the Tribunal for permission to bring forward information or a document (or a copy of a document) that is relevant to a claim for compensation if all of the following are true:

* the ***relevant authority*** gave the ***claimant*** a written request for the information or document;
* the ***claimant*** refused or failed, without reasonable excuse, to comply with the request within 28 days after the date of the written request (or within such further period as the ***relevant authority*** allowed);
* the ***relevant authority*** continued to deal with the claim and made a ***determination*** in relation to the claim;
* the ***claimant*** had the information, document or copy (or could have obtained the information, document or copy without unreasonable expense or inconvenience) before the ***determination***was made; and
* an application for review was made in relation to a ***reviewable decision*** concerning the ***determination.***

The Tribunal is not allowed to give permission unless both of the following are true:

* the ***claimant*** provides a statement of reasons why they failed to comply with the written request for the information or document; and
* the Tribunal is satisfied that there are special circumstances justifying the admission of the information, document or copy in evidence.

If permission is not granted, that information, document or copy is not able to be considered by the Tribunal as part of the evidence in the proceeding.

In addition, legal costs may not be payable by the ***relevant authority*** to the ***claimant*** in relation to the proceeding (see [Preclusion, Suspension and Repayment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#REQUEST_SUM)).

***SRC Act***: sections 58, 66 and 67.

Possible Outcomes

Once an application for review has been lodged with the Administrative Appeals Tribunal, there are several possible outcomes to the proceeding.

The Tribunal may make a decision in these circumstances:

* following a review;
* in the course of a dispute resolution process by consent of the parties to the proceeding; or
* at any other time by consent of the parties to the proceeding.

Alternatively, the Tribunal may either:

* remit the ***reviewable decision*** at any time to the ***relevant authority*** for reconsideration; or
* refer a question of law arising in the proceeding to the Federal Court of Australia for decision (on its own initiative or at the request of a party to the proceeding).

The Tribunal may dismiss the application at any time if any of the following are true:

* all the parties to the proceeding consent;
* the ***claimant*** (or their representative) fails to appear at a directions hearing, a dispute resolution process or the final hearing;
* the ***claimant*** fails within a reasonable time to proceed with the application or to comply with a direction; or
* the Tribunal is satisfied of any of the following:  
    
  + the application is frivolous, vexatious, misconceived or lacking in substance;
  + the application has no reasonable prospect of success; or
  + the application is otherwise an abuse of the process of the Tribunal.

The ***relevant authority*** may wish to abort the proceeding by varying or revoking the ***determination*** (that is, the subject of the ***reviewable decision***). If the Tribunal permits that to happen, the ***relevant authority***is liable to reimburse the ***claimant***for costs reasonably incurred by the ***claimant***in connection with that proceeding, subject to exceptions (see [Preclusion, Suspension and Repayment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#REQUEST_SUM)).

The ***claimant*** may discontinue or withdraw the application at any time by writing to the Tribunal.

A ***claimant***may be awarded legal costs and disbursements, depending on the outcome and the ***claimant's*** conduct in the proceeding. Legal costs are only awarded if the ***claimant***is legally represented. The ***claimant's***legal representative can provide advice in relation to the entitlement to legal costs.

If the Tribunal orders the ***relevant authority*** to pay costs incurred by a ***claimant***, the Tribunal may, if the parties cannot agree regarding the amount of the costs, tax (assess) or settle the amount of the costs or order that the costs be taxed (assessed) by a Tribunal registrar or an officer of the Tribunal.

For more information, see:

* [sections 34D](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s34d.html), [42A](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s42a.html)-[42D](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s42d.html) and [45](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s45.html) of the [Administrative Appeals Tribunal Act 1975](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/index.html) (Cth); and
* the Tribunal's [Guide to the Workers Compensation Jurisdiction](http://www.aat.gov.au/resources/practice-directions-guides-guidelines-and-polici).

***SRC Act***: section 67.

Decision on Review

If the Tribunal makes a decision, it may do any of the following:

* affirm the ***reviewable decision***;
* vary the ***reviewable decision***; or
* set aside the ***reviewable decision*** and do any of the following:  
    
  + make a decision in substitution for the ***reviewable decision***; or
  + remit the matter for reconsideration by the ***relevant authority*** in accordance with any directions or recommendations of the Tribunal.

The Tribunal must give reasons for its decision, which must set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

The Tribunal's decision:

* is taken to be a decision of the ***relevant authority***; and
* takes effect on and from the day the Tribunal's decision has effect or another day ordered by the Tribunal.

For more information, see [section 43](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s43.html) of the [Administrative Appeals Tribunal Act 1975](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/index.html) (Cth).

Other Forms of Review and Assistance

This section contains a summary of provisions relating to other forms of review, and an overview of assistance that may be available from Comcare Scheme regulators and other regulators.

Judicial Review

Appeals from the Administrative Appeals Tribunal

A party to a proceeding before the Administrative Appeals Tribunal may appeal to the Federal Court of Australia, on a question of law, from any decision of the Tribunal in that proceeding.

In most cases, a finding of fact by the Tribunal will not give rise a question of law. That is, in most cases, a finding of fact by the Tribunal is final.

An appeal must be lodged within 28 days after the day on which a document setting out the terms of the Tribunals' decision is given to the person. Whilst the Court may grant an extension of time, before or after the 28-day appeal period, a grant is discretionary and not guaranteed.

In some cases, the appeal may be heard by a Full Court of the Federal Court (rather than by a single judge). In other cases, the Federal Court may transfer the appeal to the Federal Circuit Court of Australia.

If you are considering this option, you should obtain independent legal advice.

For more information, see [sections 44](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s44.html) and [44AA](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/s44aa.html) of the [Administrative Appeals Tribunal Act 1975](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/index.html) (Cth).

Judicial Review of Administrative Decisions

Subject to limitations, a person may apply to the Federal Court or the Federal Circuit Court for an order of review in respect of either:

* an administrative decision if one or more prescribed grounds are made out; or
* a failure to make a decision on the ground that there has been unreasonable delay in making the decision.

If you are considering this option, you should obtain independent legal advice.

For more information, including the prescribed grounds, see [sections 3](http://www.austlii.edu.au/au/legis/cth/consol_act/adra1977396/s3.html), [5](http://www.austlii.edu.au/au/legis/cth/consol_act/adra1977396/s5.html) and [7](http://www.austlii.edu.au/au/legis/cth/consol_act/adra1977396/s7.html) of the [Administrative Decisions (Judicial Review) Act 1977](http://www.austlii.edu.au/au/legis/cth/consol_act/adra1977396/index.html) (Cth).

Other Forms of Relief

Subject to limitations, a person may apply to the Federal Court or the High Court of Australia for other forms of relief.

If you are considering this option, you should obtain independent legal advice.

For more information, see:

* section 39B of the Judiciary Act 1903 (Cth); and
* subsection 75(v) of the ***Constitution***.

Assistance from Regulators and Administrators

Comcare

If you have a concern regarding:

* the time taken for the ***relevant authority*** to make a ***determination*** or complete the reconsideration of a ***determination***;
* the performance of an ***approved program provider*** in light of mandatory operational standards issued by Comcare; or
* the performance or exercise by the ***rehabilitation authority*** of its functions or powers under the ***SRC Act*** in light of mandatory guidelines issued by Comcare,  
    
  you may contact Comcare (see [comcare.gov.au](http://www.comcare.gov.au/about_us/contact_us)).

For more information, see:

* Comcare's [Safety, Rehabilitation and Compensation Act (Operational Standards for Rehabilitation Program Providers) Determination 2020](https://www.legislation.gov.au/Series/F2019L01170); and
* Comcare's [Guidelines for Rehabilitation Authorities 2019](https://www.legislation.gov.au/Series/F2019L01031).

***SRC Act***: sections 34E and 41.

Safety, Rehabilitation and Compensation Commission

If you have a concern regarding:

* the equity of outcomes resulting from administrative practices and procedures used by Comcare and a ***licensee***in the performance of their respective functions;
* compliance by a ***licensee***with the ***SRC Act*** or with the terms or conditions of its licence;
* compliance by Comcare or a ***licensee***with directions issued by the Safety, Rehabilitation and Compensation Commission; or
* anything relating to the operation of the ***SRC Act***,  
    
  you may contact the Safety, Rehabilitation and Compensation Commission (see [srcc.gov.au](http://www.srcc.gov.au/home)).

***SRC Act***: section 89B.

Responsible Minister and Department

If you have a concern regarding matters arising under:

* the ***SRC Act***;
* the [Work Health and Safety Act 2011](http://www.austlii.edu.au/au/legis/cth/consol_act/whasa2011218/index.html) (Cth); or
* any other legislation administered by the Minister for Industrial Relations,  
    
  you may contact the Attorney-General's Department (see [ag.gov.au](https://www.ag.gov.au/about-us/connect-us/contact-us)).

For more information, see [legislation.gov.au](https://www.legislation.gov.au/Browse/ByRegDate/AdministrativeArrangementsOrders/InForce) for the current Administrative Arrangement Orders, which specify the matters dealt with by a department of state of the Commonwealth and legislation administered by a minister of state of the Commonwealth.

The Minister for Jobs and Industrial Relations may give written directions to the Chief Executive Officer of Comcare with respect to the performance of Comcare's functions or the exercise of its powers under the ***SRC Act***. However, the Minister may not give such directions in relation to a particular case. At the time of writing, there are no directions in force.

***SRC Act***: section 73.

ACT and Commonwealth Ombudsman

If you feel you have been treated unfairly or unreasonably by an ACT Government authority or an Australian Government department or agency in relation to a claim for compensation under the Comcare Scheme, you may contact the Commonwealth Ombudsman (also the ACT Ombudsman) (see [ombudsman.gov.au](http://www.ombudsman.gov.au/contact-us)).

For more information, see:

* [Complaining about ACT Government Decision Making](http://austlii.community/foswiki/ACTLawHbk/ComplainingAboutACTGovernmentDecisionMaking); and
* [Complaining about Cth Government Decision Making](http://austlii.community/foswiki/ACTLawHbk/ComplainingAboutCthGovernmentDecisionMaking).

Australian Public Service Commission and Parliamentary Service Commission

Australian Public Service and Parliamentary Service employees must comply with a code of conduct, which includes the requirement to comply with all applicable Australian laws when acting in connection with their employment.

If you have a concern regarding compliance with, or exercise of a power or performance of function under, the ***SRC Act*** by:

* an Australian Public Service employee—you may contact the Australian Public Service Commission (see [apsc.gov.au](http://www.apsc.gov.au/about-the-apsc/contact-us)); or
* a Parliamentary Service employee—you may contact the Parliamentary Service Commissioner (see [aph.gov.au](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Service_Commissioner_and_Parliamentary_Service_Merit_Protection_Commissioner)).

To assess whether a person may be employed under the [Public Service Act 1999](http://www.austlii.edu.au/au/legis/cth/consol_act/psa1999152/index.html) (Cth) (and therefore an Australian Public Service employee) or under the [Parliamentary Service Act 1999](http://www.austlii.edu.au/au/legis/cth/consol_act/psa1999235/index.html) (Cth) (and therefore a Parliamentary Service employee), see [finance.gov.au](https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/pgpa-act-flipchart-and-list).

For more information, see:

* [Australian Public Service Commissioner's Directions 2016](https://www.legislation.gov.au/Series/F2016L01430);
* [Part 3](http://www.austlii.edu.au/au/legis/cth/consol_act/psa1999152/index.html#p3) of the [Public Service Act 1999](http://www.austlii.edu.au/au/legis/cth/consol_act/psa1999152/index.html) (Cth);
* [Parliamentary Service Commissioner’s Direction 2014](https://www.legislation.gov.au/Series/F2015L00015); and
* [Part 3](http://www.austlii.edu.au/au/legis/cth/consol_act/psa1999235/index.html#p3) of the [Parliamentary Service Act 1999](http://www.austlii.edu.au/au/legis/cth/consol_act/psa1999235/index.html) (Cth).

Office of Legal Services Coordination

If you have a concern regarding compliance by the ***relevant authority*** (or its representative) with the Commonwealth's model litigant obligations (if the ***relevant authority*** is bound by the obligations), you may contact the Office of Legal Services Coordination (see [ag.gov.au](https://www.ag.gov.au/LegalSystem/LegalServicesCoordination/Pages/default.aspx)).

For more information, see [sections 4](http://www.austlii.edu.au/au/legis/cth/consol_act/psa1999235/s4.html) and [12](http://www.austlii.edu.au/au/legis/cth/consol_act/psa1999235/s12.html), and Appendix B, of the [Legal Services Directions 2017](https://www.legislation.gov.au/Series/F2017L00369) (Cth).

﻿Other Assistance

If you require independent advice or assistance in relation to:

* your rights, entitlements and obligations, including under the Comcare Scheme;
* a claim for compensation under the Comcare Scheme (including obtaining relevant medical and other evidence to support such a claim);
* a ***determination*** or requesting a reconsideration of such a decision;
* a ***reviewable decision*** or applying to the Administrative Appeals Tribunal to review such a decision; or
* any other decision under the Comcare Scheme,  
    
  you may contact:
* the ACT Law Society: [actlawsociety.asn.au](https://www.actlawsociety.asn.au/about/contact);
* the Legal Aid Commission (ACT): [legalaidact.org.au](https://www.legalaidact.org.au/contact-legal-aid); or
* if you do not reside in the Australian Capital Territory—the relevant law society or institute, or legal aid agency, in your State or Territory.

Scheme Employers

This section contains a summary of provisions relating to:

* [Current Comcare Scheme Employers](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#CSE); and
* [Former Comcare Scheme Employers](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#FSE).

﻿Current Comcare Scheme Employers

The employers or class of employers identified in Table 17 are considered to be ***scheme employers*** for the purposes of this chapter.

**Table 17—Summary of Scheme Employers**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=17;up=0#sorted_table) | [**Class of employer**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=17;up=0#sorted_table) | [**Comcare Scheme status / insurer / *relevant authority* / *rehabilitation authority***](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=17;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=17;up=0#sorted_table) |
| --- | --- | --- | --- |
| 17.1 | The ***ACT*** including the ***ACT*** Public Service. | Scheme status: ***licensed authority***.  Insurer: self insures.  ***Relevant authority***: ***ACT***.  ***Rehabilitation authority***: the Head of Service engaged under [section 31](http://www.austlii.edu.au/au/legis/wa/consol_act/psma1994235/s31.html) of the [Public Sector Management Act 1994 (ACT)](https://www.legislation.act.gov.au/a/1994-37/). | See [act.gov.au](https://www.directory.act.gov.au/) for a list of ACT government directorates.  See [act.gov.au](https://www.directory.act.gov.au/) for a list of ***ACT*** public authorities and ***ACT*** owned corporations.  ***SRC Act***: subsection 4(14) and section 4A. |
| 17.2 | A declared body corporate controlled by the ***ACT***. | Scheme status: part of the ***ACT***.  Insurer: Comcare.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: the Head of Service engaged under [section 31](http://www.austlii.edu.au/au/legis/wa/consol_act/psma1994235/s31.html) of the [Public Sector Management Act 1994 (ACT)](https://www.legislation.act.gov.au/a/1994-37/). | No current declared bodies corporate in existence.  Former declared bodies corporate include:   * ACTEW Corporation Ltd; * ACTTAB Ltd; * Australian Capital Territory Gaming and Liquor Authority; * Totalcare Industries Ltd; and * Rhodium Asset Solutions Ltd.   ***SRC Act***: subsections 4(14) and 5(13). |
| 17.3 | A Commonwealth department of state. | Scheme status: Commonwealth entity.  Insurer: Comcare.  ***Relevant authority***: Comcare (or a Comcare delegate, for some departments).  ***Rehabilitation authority***: the Secretary of that department. | See [australia.gov.au](https://www.australia.gov.au/about-government/departments-and-agencies/list-of-departments-and-agencies) for a list of Commonwealth departments and agencies.  See [legislation.gov.au](https://www.legislation.gov.au/Browse/ByRegDate/AdministrativeArrangementsOrders/InForce) for the current Administrative Arrangement Orders, which specifies:   * matters dealt with by a department of state of the Commonwealth; and * legislation administered by a minister of state of the Commonwealth.   See [finance.gov.au](https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/pgpa-act-flipchart-and-list) for Commonwealth governance structures and flipchart of Commonwealth entities and companies.  ***SRC Act***: subsection 4(1). |
| 17.4 | A Commonwealth executive agency established under the [Public Service Act 1999](http://www.austlii.edu.au/au/legis/cth/consol_act/psa1999152/index.html) (Cth) (other than a ***Commonwealth authority***). | Scheme status: Commonwealth entity.  Insurer: Comcare.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: the Head of that agency. |
| 17.5 | A Commonwealth statutory agency declared by a ***law of the Commonwealth*** to be a statutory agency for the purposes of [Public Service Act 1999](http://www.austlii.edu.au/au/legis/cth/consol_act/psa1999152/index.html) (Cth) (other than a ***Commonwealth authority***). | Scheme status: Commonwealth entity.  Insurer: Comcare.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: the Head of that agency. |
| 17.6 | A Commonwealth parliamentary department. | Scheme status: Commonwealth entity.  Insurer: Comcare.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: the Secretary of that department. | There are currently four Commonwealth parliamentary departments:   * Department of the Senate; * Department of the House of Representatives; * Department of Parliamentary Services; and * Parliamentary Budget Office.   See [aph.gov.au](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments).  ***SRC Act***: subsection 4(1). |
| 17.7 | A prescribed Commonwealth entity. | Scheme status: Commonwealth entity.  Insurer: Comcare.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: the person prescribed as the principal officer. | See [legislation.gov.au](https://www.legislation.gov.au/Series/F2002B00055) for a list of current prescribed entities and principal officers.  ***SRC Regs***: regulation 16 and Schedule 4.  ***SRC Act***: subsection 4(1). |
| 17.8 | A ***Commonwealth authority*** (other than the ***ACT*** or a ***licensed authority***). | Scheme status: ***Commonwealth authority***.  Insurer: Comcare.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: see Note 1. | See [australia.gov.au](https://www.australia.gov.au/about-government/departments-and-agencies/list-of-departments-and-agencies) for a list of Commonwealth departments and agencies.  See [legislation.gov.au](https://www.legislation.gov.au/Series/C2004A03668/Enables) for legislative instruments declaring a body corporate to be a ***Commonwealth authority*** (complete list to be included in a later version of this chapter).  See [finance.gov.au](https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/pgpa-act-flipchart-and-list) for Commonwealth governance structures and flipchart of Commonwealth entities and companies.  See [srcc.gov.au](http://www.srcc.gov.au/information_for_self-insurers/licensees) for a list of current and former ***licensees***, including:   * former trading names; and * whether covered by the Work Health and Safety Act 2011 (Cth).   ***SRC Regs***: regulation 14B.  ***SRC Act***: subsection 4(1) and Part VIII. |
| 17.9 | A ***Commonwealth authority*** that holds a licence under the scheme. | Scheme status: ***licensed authority***.  Insurer: third party insurer or self-insures.  ***Relevant authority***: that authority (who may have engaged a third party claims manager and/or reviewer, subject to the scope and conditions of the authority’s licence).  ***Rehabilitation authority***: see Note 1. |
| 17.10 | A ***Commonwealth authority*** that formerly held a licence under the scheme. | Scheme status: ***Commonwealth authority*** (former ***licensed authority***).  Insurer: Comcare.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: see Notes 1 and 2. |
| 17.11 | A ***corporation*** that holds a licence under the scheme. | Scheme status: ***licensed corporation***.  Insurer: third party insurer or self-insures.  ***Relevant authority***: that ***corporation***(who may have engaged a third party claims manager and/or reviewer, subject to the terms and conditions of the ***corporation’s*** licence).  ***Rehabilitation authority***: the principal executive officer of that ***corporation***. | See [srcc.gov.au](http://www.srcc.gov.au/information_for_self-insurers/licensees) for a list of current and former ***licensees***, including:   * former trading names; and * whether covered by the Work Health and Safety Act 2011 (Cth).   ***SRC Act***: subsection 4(1) and Part VIII. |
| **Note 1:** If the ***Commonwealth authority*** is constituted by:   * a person—the ***rehabilitation authority*** is the person who constitutes that authority; or * two or more persons or is managed by a board—the ***rehabilitation authority*** is the person who is entitled to preside at any meeting of that authority or board at which the person is present. | | | |
| **Note 2:** If the ***Commonwealth authority*** is a former ***licensed authority***, Comcare has a discretionary power to arrange for the ***rehabilitation authority*** function to be performed by a suitable and willing person. | | | |

﻿Former Comcare Scheme Employers

The employers or class of employers identified in Table 18 may have functions under the Comcare Scheme but they are not ***scheme employers*** for the purposes of this chapter.

**Table 18—Summary of Former Scheme Employers**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=18;up=0#sorted_table) | [**Class of employer**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=18;up=0#sorted_table) | [**Comcare Scheme status / *relevant authority* / *rehabilitation authority***](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=18;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=18;up=0#sorted_table) |
| --- | --- | --- | --- |
| 18.1 | A body corporate that has ceased to be a ***Commonwealth authority*** but continues in existence. | Scheme status: former ***Commonwealth authority***.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: the principal officer of the body corporate (to be determined as if the body corporate had not ceased to be a ***Commonwealth authority***). | ***SRC Act***: subsection 4(15) and section 41B. |
| 18.2 | A body corporate that has ceased to be a ***Commonwealth authority*** and ceases to exist, and there is a specified successor. | Scheme status: former ***Commonwealth authority***  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: the principal officer of the specified successor. | There are currently no specified successors.  ***SRC Act***: section 41C. |
| 18.3 | A ***corporation*** that formerly held a licence under the scheme. | Scheme status: former ***licensed corporation***.  ***Relevant authority***: the principal executive officer of that ***corporation***, but Comcare has a discretionary power to arrange for the ***relevant authority*** function to be performed by a suitable and willing person.  ***Rehabilitation authority***: the principal executive officer of that ***corporation***, but Comcare has a discretionary power to arrange for the ***rehabilitation authority*** function to be performed by a suitable and willing person. | See [srcc.gov.au](http://www.srcc.gov.au/information_for_self-insurers/licensees) for a list of current and former ***licensees***, including whether covered by the [Work Health and Safety Act 2011](http://www.austlii.edu.au/au/legis/cth/consol_act/whasa2011218/index.html) (Cth).  ***SRC Regs***: [regulations 15](http://www.austlii.edu.au/au/legis/cth/consol_act/whasa2011218/s15.html), 15A and 15B.  ***SRC Act***: section 107A and Part VIII. |

﻿Deemed Employees

This section contains a summary of provisions relating to persons who are taken to be either:

* [Employees Covered by the Comcare Scheme](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ECBTCS); and
* [Persons Not Covered by the Comcare Scheme](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#PNCBTCS).

﻿Employees Covered by the Comcare Scheme

The class of persons identified in Table 19 are considered to be deemed ***employees*** for the purposes of this chapter.

**Table 19—Summary of Deemed Employees**

| [**Ref.**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=19;up=0#sorted_table) | [**Class of deemed *employee***](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=19;up=0#sorted_table) | [**Deemed employer / deemed employment / *relevant authority* / *rehabilitation authority***](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=19;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=3;table=19;up=0#sorted_table) |
| --- | --- | --- | --- |
| 19.1 | A person who is an officer or employee of an ***ACT*** authority or body established by a law that is either:   * made by the Legislative Assembly for the ***ACT***; or * taken to be an enactment,  under the [Australian Capital Territory (Self-Government) Act 1988](http://www.austlii.edu.au/au/legis/cth/consol_act/acta1988482/index.html) (Cth). | Employer: the person is taken to be employed by the ***ACT***.  Employment: no deeming provisions in relation to employment.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: the Head of Service engaged under [section 31](http://www.austlii.edu.au/au/legis/wa/consol_act/psma1994235/s31.html) of the [Public Sector Management Act 1994](http://www.austlii.edu.au/au/legis/wa/consol_act/psma1994235/index.html) (ACT). | See [Scheme Employers](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#LOCSE), including for employment by:   * the ***ACT***; and * a declared body corporate controlled by the ***ACT***.   ***SRC Act***: subsections 4(1) and 5(11). |
| 19.2 | A person who is an officer or employee of a declared body corporate controlled by the ***ACT***. |
| 19.3 | A person who is employed under the [Legislative Assembly (Members' Staff) Act 1989](http://www.austlii.edu.au/au/legis/act/consol_act/lasa1989334/index.html) (ACT). |
| 19.4 | Any of the following:   * the Commissioner; * a Deputy Commissioner; or * a member,  of the ACT Fire Brigade under the [Fire Brigade (Administration) Act 1974](http://www.austlii.edu.au/au/legis/act/repealed_act/fba1974304/index.html) (ACT). |
| 19.5 | A person who either:   * holds; or * is acting in,  an office established under a law made under, or by the Legislative Assembly of the ***ACT*** under, the [Australian Capital Territory (Self-Government) Act 1988](http://www.austlii.edu.au/au/legis/cth/consol_act/acta1988482/index.html) (Cth). |
| 19.6 | Any of the following:   * the Australian Federal Police Commissioner; * a Deputy Commissioner of the Australian Federal Police; or * an employee of the Australian Federal Police,  within the meaning of the [Australian Federal Police Act 1979](http://www.austlii.edu.au/au/legis/cth/consol_act/afpa1979225/index.html) (Cth). | Employer: the person is taken to be employed by the Australian Federal Police (a Commonwealth statutory agency).  Employment: the person's employment is taken to be constituted by the person's performance of duties as the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an employee of the Australian Federal Police.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: the Commissioner of Police. | ***SRC Regs***: [section 16](http://www.austlii.edu.au/au/legis/cth/num_act/afpa1979225/s16.html) and Schedule 4.  ***SRC Act***: subsections 4(1) and 5(2). |
| 19.7 | A person who is either:   * the holder of; or * acting in,  an office established by a ***law of the Commonwealth***. | Employer: the person is taken to be employed the Commonwealth.  Employment: the person's employment is taken to be constituted by the person's performance of the duties of that office.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: see Note 1. | ***SRC Act***: subsections 4(1) and 5(2). |
| 19.8 | A person who is either:   * the holder of; or * acting in,  a declared office established by a law of a Territory (other than the ***ACT*** or the Northern Territory). |
| 19.9 | A person who either:   * constitutes; or * is acting as the person constituting,  a ***Commonwealth authority***. | Employer: the person is taken to be employed by that authority.  Employment: the person's employment is taken to be constituted by the performance of the duties of that authority.  ***Relevant authority***: see Note 2.  ***Rehabilitation authority***: see Note 3. | See [Scheme Employers](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#LOCSE), for employment by a ***Commonwealth authority***.  ***SRC Act***: subsections 4(1) and 5(3). |
| 19.10 | A person who either:   * is; or * is acting as,  a member of a ***Commonwealth authority***. | Employer: the person is taken to be employed by that authority.  Employment: the person's employment is taken to be constituted by the performance of the person's duties as that member (or acting member).  ***Relevant authority***: see Note 2.  ***Rehabilitation authority***: see Note 3. |
| 19.11 | A person who is a deputy of a person who either:   * is; or * is acting as,  a member of a ***Commonwealth authority***. | Employer: the person is taken to be employed by that authority.  Employment: the person's employment is taken to be constituted by the performance of the person's duties as such the deputy.  ***Relevant authority***: see Note 2.  ***Rehabilitation authority***: see Note 3. |
| 19.12 | A person who is a member of a specified class of persons who engage in activities or perform acts:   * at the request or direction of the Commonwealth; * for the benefit of the Commonwealth; or * under a requirement made by or under a ***law of the Commonwealth***. | Employer: the person is taken to be employed by the Commonwealth.  Employment: the person’s employment is taken to be constituted by the person’s performance of specified acts.  ***Relevant authority***: Comcare.  ***Rehabilitation authority***: see Note 1. | See [legislation.gov.au](https://www.legislation.gov.au/Series/C2004A03668/Enables) for legislative instruments specifying classes of persons and activities (complete list to be included in a later version of this chapter).  ***SRC Act***: subsections 4(1) and 5(6). |
| 19.13 | A person who is a member of a specified class of persons who engage in activities or perform acts:   * at the request or direction; or * for the benefit,  of a ***Commonwealth authority***. | Employer: the person is taken to be employed by that authority.  Employment: the person’s employment is taken to be constituted by the person’s performance of specified acts.  ***Relevant authority***: see Note 2.  ***Rehabilitation authority***: see Note 3. |
| 19.14 | A person who is a member of a specified class of persons who engage in activities or perform acts:   * at the request or direction; or * for the benefit,  of a ***licensed corporation***. | Employer: the person is taken to be employed by that ***corporation***.  Employment: the person’s employment is taken to be constituted by the person’s performance of specified acts.  ***Relevant authority***: that ***corporation***(who may have engaged a third party claims manager and/or reviewer, subject to the terms and conditions of the ***corporation’s*** licence).  ***Rehabilitation authority***: the principal executive officer of that ***corporation***. |
| **Note 1:** If the person is taken to be employed by:   * a Commonwealth department of state or parliamentary department—the ***rehabilitation authority*** is the Secretary of that department; * a Commonwealth executive agency or statutory agency—the ***rehabilitation authority*** is the Head of that agency; or * a prescribed Commonwealth entity—the ***rehabilitation authority*** is the person prescribed as the principal officer. | | | |
| **Note 2:** If the ***Commonwealth authority*** is either:   * not a ***licensed authority***—the ***relevant authority*** is Comcare; or * a ***licensed authority***—the ***relevant authority*** is that authority (who may have engaged a third party claims manager and/or reviewer, subject to the terms and conditions of the authority’s licence). | | | |
| **Note 3:** If the ***Commonwealth authority*** is constituted by:   * a person—the ***rehabilitation authority*** is the person who constitutes that authority; or * two or more persons or is managed by a board—the ***rehabilitation authority*** is the person who is entitled to preside at any meeting of that authority or board at which the person is present. | | | |

﻿Persons Not Covered by the Comcare Scheme

Not Employed by the ACT

The following persons or offices are not taken to be employed by the ***ACT*** for the purposes of the ***SRC Act***:

* the Chief Minister;
* the Deputy Chief Minister;
* a minister;
* the Presiding Officer of the Legislative Assembly;
* a deputy to the Presiding Officer of the Legislative Assembly; and
* a member of the Legislative Assembly.

***SRC Act***: subsection 5(14).

Not Employees

The ***SRC Act*** does not apply to any of the following persons or offices:

* a member of the Australian Defence Force;
* an employee to whom the [Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988](http://www.austlii.edu.au/au/legis/cth/consol_act/sracca1988512/index.html) (Cth) applies (see [Military Rehabilitation and Compensation](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#DRCA));
* a veteran to whom the [Veterans' Entitlements Act 1986](http://www.austlii.edu.au/au/legis/cth/consol_act/vea1986261/index.html) (Cth) applies (see [Veterans' Entitlements](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#VETS));
* an employee to whom the [Seafarers Rehabilitation and Compensation Act 1992](http://www.austlii.edu.au/au/legis/cth/consol_act/sraca1992381/index.html) (Cth) applies (see [Seacare Scheme](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#SEACARE));
* a member of the Parliament of the Commonwealth or a Minister of State of the Commonwealth (see [Parliament Injury Compensation Scheme](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#PICS));
* a person who is a judge as defined by [section 4](http://www.austlii.edu.au/au/legis/cth/consol_act/jpa1968184/s4.html) of the [Judges' Pensions Act 1968](http://www.austlii.edu.au/au/legis/cth/consol_act/jpa1968184/index.html) (Cth) (that is, a Justice or Judge of a federal court, other than the Federal Circuit Court of Australia); or
* an officer or employee of the public service of an external Territory.

***SRC Act***: subsection 5(8).

﻿Glossary of Terms

Some of the following terms are adapted from the ***SRC Act*** and are subject to a contrary intent. Others are defined terms for the purposes of this chapter.

If you followed a link to this section from a different section in this chapter, you can click back on your browser to return to that section.

| [**Term**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=0;table=20;up=0#sorted_table) | [**Meaning**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=1;table=20;up=0#sorted_table) | [**More information**](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme?sortcol=2;table=20;up=0#sorted_table) |
| --- | --- | --- |
| ***1912 Act*** | [Commonwealth Workmen’s Compensation Act 1912](http://www.austlii.edu.au/au/legis/cth/num_act/cwca191229o1912439/index.html) (Cth). | See [legislation.gov.au](https://www.legislation.gov.au/Series/C1912A00029). |
| ***1930 Act*** | Commonwealth Employees’ Compensation Act 1930 (Cth). | See [legislation.gov.au](https://www.legislation.gov.au/Series/C1930A00024). |
| ***1971 Act*** | Compensation (Commonwealth Government Employees) Act 1971 (Cth). | See [legislation.gov.au](https://www.legislation.gov.au/Series/C1971A00048). |
| ***ACT*** | Means the Australian Capital Territory, which has been declared a ***Commonwealth authority*** for the purposes of the Comcare Scheme since 01/07/1994.  Prior to the establishment of the ACT Government Service on 01/07/1994, most ACT public servants were employed as Australian Public Service ***employees***.  Persons not covered by the Comcare Scheme may be covered by the [Workers Compensation Act 1951](http://www.austlii.edu.au/au/legis/act/consol_act/wca1951255/index.html) (ACT) (see [ACT Private Workers Compensation Scheme](http://austlii.community/foswiki/ACTLawHbk/ACTPrivateWorkersCompensationScheme)). | ***SRC Act***: subsections 4(1) and section 4A. |
| ***action for non-economic loss*** | Means any action (whether or not it involves the formal institution of a proceeding) to recover an amount for ***damages*** for ***non-economic loss*** sustained by an ***employee*** as a result of an ***injury*** that is taken by the ***employee*** against their ***scheme employer***, or against another employee of that employer, and that follows an election made by the ***employee*** under subsection 45(1) of the ***SRC Act***.  See discussion of [Alternative Claim for Damages](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ACFD) in the Compensation section. | ***SRC Act***: subsection 4(1). |
| ***aggravation*** | Includes acceleration or recurrence. | ***SRC Act***: subsection 4(1). |
| ***ailment*** | Means any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development). | ***SRC Act***: subsection 4(1). |
| ***AMA5*** | Means the American Medical Association’s Guides to the Evaluation of Permanent Impairment (fifth edition). | See [ama-asn.org](https://commerce.ama-assn.org/store/). |
| ***approved guide*** | Means the Guide to the Assessment of the Degree of Permanent Impairment, which is a document prepared by Comcare and approved by the Minister that sets out the criteria and methods for assessing the degree of ***permanent impairment*** resulting from an ***injury*** and the degree of ***non-economic loss*** resulting from an ***injury*** or ***impairment***. | See [Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1](https://www.legislation.gov.au/Series/F2011L02375).  ***SRC Act***: section 28. |
| ***approved program provider*** | Means a person or body approved by Comcare as a ***rehabilitation program*** provider. | ***SRC Act***: Division 2 of Part III. |
| ***attendant care services*** | Means services (other than ***household services***, medical or surgical services or nursing care) that are required for the essential and regular personal care of the ***employee***. | ***SRC Act***: subsection 4(1). |
| ***catastrophic injury*** | Means an ***injury***, where the conditions specified in the legislative rules are satisfied. | See [Safety, Rehabilitation and Compensation (Catastrophic Injury) Rules 2018](https://www.legislation.gov.au/Series/F2018L01160).  ***SRC Act***: subsection 4(1). |
| ***child*** or ***children*** | Without limiting who is a child of a person for the purposes of the Comcare Scheme, someone is the child of a person if they are a child of the person within the meaning of the [Family Law Act 1975](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/index.html) (Cth). | ***SRC Act***: subsection 4(1). |
| ***claimant*** | Means a person in respect of whom either:   * a valid claim for compensation has been made under the Comcare Scheme; or * a ***determination*** is made,   and a reference to a ***claimant*** in the ***SRC Act*** is generally taken to include, after the ***claimant*** has died, a reference to the ***claimant's*** legal personal representative. | ***SRC Act***: subsections 4(1) and (11). |
| ***Commonwealth authority*** | Means any of the following:   * the ***ACT*** since 01/07/1994; * a body corporate that is incorporated for a public purpose by a ***law of the Commonwealth*** (unless declared by the Minister to be not covered by the Comcare Scheme); or * a body corporate that is declared by the Minister to be covered by the Comcare Scheme,   and in relation to a person employed by a ***Commonwealth authority***, references in the ***SRC Act*** to the Commonwealth are read as references to that authority. | See [Scheme Employers](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#LOCSE), including for a list of declared bodies corporate.  ***SRC Act***: subsections 4(1) and 5(7), and section 4A. |
| ***Constitution*** | See section 9 of the Commonwealth of Australia Constitution Act (Imp). | See [legislation.gov.au](https://www.legislation.gov.au/Browse/ByTitle/Constitution/InForce#top). |
| ***damages*** | Includes any amount paid under a compromise or settlement of a claim for damages, whether or not legal proceedings have been instituted, but does not include an amount paid in respect of costs incurred in connection with legal proceedings | ***SRC Act***: subsection 4(1). |
| ***dependant*** | In relation to a deceased ***employee***, means any of the following:   * the ***spouse***, ***parent***, ***step-parent***, father-in-law, mother-in-law, grandparent, ***child***, ***stepchild***, grandchild, sibling or half-sibling of the ***employee***; or * a person in relation to whom the ***employee*** stood in the position of a ***parent***or who stood in the position of a ***parent***to the ***employee***,being a person who was wholly or partly dependent for economic support on the ***employee*** at the date of the ***employee's*** death. | See Note 1 for the meaning of relationships under the Comcare Scheme.  ***SRC Act***: subsection 4(1). |
| ***de facto partner*** | A person is the de facto partner of an ***employee*** (whether of the same sex or a different sex) if either:   * the person is in a registered relationship with the ***employee*** (that is, the relationship is registered under a prescribed law of a State or Territory as a prescribed kind of relationship); or * the person is in a de facto relationship with the ***employee*** under [section 2F](http://www.austlii.edu.au/au/legis/cth/consol_act/aia1901230/s2f.html) of the [Acts Interpretation Act 1901](http://www.austlii.edu.au/au/legis/cth/consol_act/aia1901230/index.html) (Cth). | Acts Interpretations Act 1901 (Cth): sections 2D-2F.  See [legislation.gov.au](https://www.legislation.gov.au/Series/C1901A00002)  ***SRC Act***: subsection 4(1). |
| ***determination*** | Means a determination, decision (which has the same meaning as in the [Administrative Appeals Tribunal Act 1975](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/index.html) (Cth)) or requirement made under one of the following relevant provisions in the ***SRC Act***:   * compensation:   + section 14 (***injury***);   + section 15 (***property used by employee***);   + section 16 (***medical treatment***);   + section 17 (death);   + section 18 (funeral expenses);   + sections 8, 19, 20, 21, 21A, 22 (***incapacity for work***);   + sections 24, 25, 27 (***permanent impairment***);   + section 29 (***household services*** or ***attendant care services***);   + sections 30, 31 (redemption of compensation); or   + section 39 (alteration, modification, aid or appliance); * rehabilitation:   + section 36 (***rehabilitation assessment***); or   + section 37 (***rehabilitation program***); or * other:   + paragraph 114B(5)(a) (recovery of overpayment to retired ***employee***); or   + Division 3 of Part X (transitional provisions relating to certain former ***employees***). | See Note 2, for the meaning of decision under the [Administrative Appeals Tribunal Act 1975](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/index.html) (Cth).  ***SRC Act***: subsection 60(1). |
| ***disease*** | Means an ***ailment***suffered by an ***employee***, or an ***aggravation***of such an ***ailment***, that was contributed to:   * if suffered before 13/04/2007—to a ***material degree***; or * if suffered after 12/04/2007—to a ***significant degree***,  by the ***employee's***employment by a ***scheme employer***. | ***SRC Act*** (as in force before 13/04/2007): subsection 4(1) for definition of ***disease***before 13/04/2007.  ***SRC Act***: section 5B for definition of ***disease***after 12/04/2007. |
| ***employee*** | Generally means a person who is employed, or deemed to be employed, by a ***scheme employer***, but see [Employee and Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#EAE), for rules under the Comcare Scheme concerning ***employees*** and employment. | ***SRC Act***: section 5. |
| ***household services*** | Means services of a domestic nature (including cooking, house cleaning, laundry and gardening services) that are required for the proper running and maintenance of the ***employee's*** household. | ***SRC Act***: subsection 4(1). |
| ***impairment*** | Means 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. | ***SRC Act***: subsection 4(1). |
| ***incapacity for work*** | Means an incapacity suffered by an ***employee*** as a result of an ***injury***, being an incapacity to engage in either:   * any work; or * work at the same level at which the ***employee*** was engaged by the ***employee's scheme employer*** in that work or any other work immediately before the ***injury*** happened. | ***SRC Act***: subsections 4(1) and (9). |
| ***injury*** | Means any of the following:   * a ***disease*** suffered by an ***employee***; * an injury (other than a ***disease***) suffered by an ***employee***, that is a physical or mental injury arising out of, or in the course of, the ***employee's*** employment; or * an ***aggravation*** of a physical or mental injury (other than a ***disease***) suffered by an ***employee*** (whether or not that injury arose out of, or in the course of, the ***employee's*** employment), that is an ***aggravation*** that arose out of, or in the course of, the ***employee's*** employment,   but does not include:   * if suffered before 13/04/2007—any such ***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; or * if suffered after 12/04/2007—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. | ***SRC Act*** (as in force before 13/04/2007): subsection 4(1) for definition of ***injury***before 13/04/2007.  ***SRC Act***: section 5A for definition of ***injury***after 12/04/2007. |
| ***law of the Commonwealth*** | In any Commonwealth Act, a reference to a law, or the law, of the Commonwealth does not include (and is taken never to have included) a reference to a law in force in a Territory so far as the law is so in force because of a Commonwealth Act providing for the acceptance, administration or government of that Territory (subject to a contrary intention). | Acts Interpretations Act 1901 (Cth): sections 2 and 2H.  See [legislation.gov.au](https://www.legislation.gov.au/Series/C1901A00002). |
| ***licensed authority*** | Means a ***Commonwealth authority*** that is the holder of a licence under Part VIII of the ***SRC Act*** that is in force. | ***SRC Act***: subsection 4(1) and Part VIII. |
| ***licensed corporation*** | Means a corporation (other than a ***Commonwealth authority***) that is either:   * a foreign corporation, financial corporation or trading corporation within the meaning of the ***Constitution***; or * a body corporate that is incorporated in a Territory,   and the holder of a licence under Part VIII of the ***SRC Act*** that is in force. | ***SRC Act***: subsection 4(1) and Part VIII. |
| ***licensee*** | Means a ***licensed authority*** or a ***licensed corporation***. | ***SRC Act***: subsection 4(1) and Part VIII. |
| ***material degree*** | See discussion of material degree in [Rules for Ailments](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RFAD). | ***SRC Act*** (as in force before 13/04/2007): subsection 4(1). |
| ***medical examination*** | Means a medical examination that the ***employee***is required to undergo in accordance with section 57 of the ***SRC Act***. | ***SRC Act***: section 57. |
| ***medical treatment*** | See discussion of [Medical Treatment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#MT) in the Compensation section, | ***SRC Act***: subsection 4(1). |
| ***non-economic loss*** | In relation to an ***employee*** who has suffered an ***injury*** resulting in a ***permanent impairment***, ***non-economic loss*** means loss or damage of a non-economic kind suffered by the ***employee*** (including pain and suffering, a loss of expectation of life or a loss of the amenities or enjoyment of life) as a result of that ***injury*** or ***impairment*** and of which the ***employee*** is aware. | ***SRC Act***: subsection 4(1). |
| ***normal weekly earnings*** | See discussion of [Normal Weekly Earnings](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#NWE) in the Compensation section. | ***SRC Act***: sections 8 and 9. |
| ***normal weekly hours*** | Means the average number of hours including overtime (which includes any duty on shifts or on Saturdays, Sundays or other holidays, and excess travelling time) worked during the ***relevant period***. | ***SRC Act***: subsection 4(1). |
| ***parent*** | Without limiting who is a parent of a person for the purposes of the Comcare Scheme, someone is the parent of a person if the person is their child because of the definition of ***child*** under the Comcare Scheme. | See Note 1 for the meaning of relationships under the Comcare Scheme.  ***SRC Act***: subsection 4(1). |
| ***permanent*** | Means likely to continue indefinitely. | ***SRC Act***: subsection 4(1). |
| ***permanent impairment*** | Means an ***impairment*** that is likely to continue indefinitely in light of all relevant matters including all of the following:   * the duration of the ***impairment***; * the likelihood of improvement in the ***employee's*** condition; and * whether the ***employee*** has undertaken all reasonable rehabilitative treatment for the ***impairment.*** | ***SRC Act***: subsections 4(1) and 24(2). |
| ***place of residence*** | In relation to an ***employee***, means any of the following:   * the place where the ***employee*** normally resides; * a place, other than the place referred to in the preceding point, where the ***employee*** resides temporarily, as a matter of necessity or convenience, for the purposes of their employment; or * any other place where the ***employee*** stays, or intends to stay, overnight, a journey to which from the ***employee's place of work*** does not substantially increase the risk of sustaining an injury when compared with the journey from their ***place of work*** to the place referred to the first preceding point. | ***SRC Act***: subsection 4(1). |
| ***place of work*** | In relation to an ***employee***, includes any place at which the ***employee*** is required to attend for the purpose of carrying out the duties of their employment. | ***SRC Act***: subsection 4(1). |
| ***prescribed child*** or ***prescribed children*** | Means one of the following:   * a person under 16; or * a person who is 16 or more but under 25, receiving full-time education at a school, college, university or other educational institution and not ordinarily in employment or engaged in work on their own account,   and for the purposes of the Comcare Scheme, a ***prescribed child*** who, immediately before the date of an ***employee's*** death, lived with the ***employee*** and was a ***child*** of the ***employee***, is taken to wholly dependent for economic support on the ***employee*** at that date. | See Note 1 for the meaning of relationships under the Comcare Scheme.  ***SRC Act***: subsection 4(1). |
| ***prescribed person*** | Means, in relation to an ***employee***, the ***spouse*** of the ***employee*** or any of the following persons, being a person who is 16 or more:   * the ***parent***, ***step-parent***, father-in-law, mother-in-law, grandparent, ***child***, ***stepchild***, grandchild, sibling or half-sibling of the ***employee***; * a person in relation to whom the ***employee*** stands in the position of a ***parent*** or who stands in the position of a ***parent*** to the ***employee***; or * a person (other than the ***spouse*** of the ***employee*** or a person referred to in the preceding points) who is wholly or mainly maintained by the ***employee*** and has the care of a ***prescribed child***, being a ***child*** who is wholly or mainly dependent for economic support on the ***employee.*** | See Note 1 for the meaning of relationships under the Comcare Scheme.  ***SRC Act***: subsection 4(1). |
| ***property used by an/the employee*** | Means an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the ***employee***. | ***SRC Act***: subsection 4(1). |
| ***property used by the person*** | Means an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the person. |
| ***rehabilitation assessment*** | See discussion of [Rehabilitation Assessment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#REHABASSESS) in the Rehabilitation section. | ***SRC Act***: sections 4 and 36. |
| ***rehabilitation authority*** | Is taken to mean either:   * in relation to an ***employee*** who is currently employed by a ***scheme employer***—the principal officer of that ***scheme employer***; or * in relation to an ***employee*** who is no longer employed by a ***scheme employer***—the principal officer of the ***employee's*** last ***scheme employee***,   and if all of the following are true:   * the ***employee's*** last ***scheme employer*** was not the ***ACT*** or a ***licensee***; * the ***employee's*** last ***scheme employer*** has been abolished; or * the relevant function performed by the ***employee's*** last ***scheme employer*** has been transferred to another ***scheme employer*** (other than the ***ACT*** or a ***licensee***),   then ***employee's*** last ***scheme employer*** is taken to be the ***scheme employer*** to which the relevant function was transferred. | This definition is based on Comcare's [Guidelines for Rehabilitation Authorities 2012](https://www.legislation.gov.au/Series/F2012L01121).  See [Scheme Employers](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#LOCSE), to assist you to identify the ***rehabilitation authority***.  ***SRC Act***: subsection 4(1) and section 41. |
| ***rehabilitation program*** | Includes medical, dental, psychiatric and hospital services (whether on an in-patient or out-patient basis), physical training and exercise, physiotherapy, occupational therapy and vocational training. | ***SRC Act***: subsection 4(1). |
| ***relevant authority*** | Is taken to mean either:   * in relation to an ***employee*** who is employed by a ***licensee*** at the relevant time—that ***licensee***; or * in relation to any other ***employee***—Comcare. | See [Employment at the Relevant Time](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#WHICHEMP) in the Employee and Employment section, to assess whether an employee was employed by a ***licensee*** at the relevant time.  ***SRC Act***: subsection 4(1). |
| ***relevant employer*** | See discussion of [Who is the Relevant Employer?](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RELEMP) in the Rehabilitation section. | ***SRC Act***: sections 40, 41B-41D. |
| ***relevant period*** | See discussion of [Relevant Period](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RELPER) in the Compensation section. | ***SRC Act***: subsection 4(1) and section 9. |
| ***reviewable decision*** | Means a decision (which has the same meaning as in the [Administrative Appeals Tribunal Act 1975](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/index.html) (Cth)) made by the ***relevant authority*** following reconsideration of a ***determination*** made by the ***relevant authority*** or the ***rehabilitation authority***. | See Note 2, for the meaning of decision under the Administrative Appeals Tribunal Act 1975 (Cth).  ***SRC Act***: subsection 60(1) and section 63. |
| ***scheme employer*** | For the purposes of this chapter, means an employer under the Comcare Scheme (see [Scheme Employers](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#LOCSE)). | ***SRC Act***: subsection 4(1) and section 5. |
| ***significant degree*** | Means a degree that is substantially more than material (see also discussion of ***material degree*** in [Rules for Ailments](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#RFAD)). | ***SRC Act***: subsections 4(1) and 5B(3). |
| ***spouse*** | Includes either:   * in relation to an ***employee*** or a deceased ***employee—***a person who is, or immediately before the ***employee's***death was, a ***de facto partner***of the employee; or * in relation to an ***employee*** or a deceased ***employee*** who is or was a member of the Aboriginal race of Australia or a descendant of indigenous inhabitants of the Torres Strait Islands—a person who is or was recognised as the ***employee's*** husband, wife or spouse by the custom prevailing in the tribe or group to which the ***employee*** belongs or belonged,   and for the purposes of:   * any Commonwealth Act—a person is the spouse of an ***employee*** (whether of the same sex or a different sex) if the person is legally married to the ***employee***; and * the Comcare Scheme—a person who, immediately before the date of an ***employee's*** death, lived with the ***employee*** and was the ***spouse*** of the ***employee*** is taken to be wholly dependent for economic support on the ***employee*** at that date. | See Note 1 for the meaning of relationships under the Comcare Scheme.  Acts Interpretations Act 1901 (Cth): sections 2D-2F.  See [legislation.gov.au](https://www.legislation.gov.au/Series/C1901A00002).  ***SRC Act***: subsection 4(1). |
| ***SRC Act*** | [Safety, Rehabilitation and Compensation Act 1988](http://www.austlii.edu.au/au/legis/cth/consol_act/sraca1988368/index.html) (Cth).  The ***SRC Act*** was originally enacted as the [Commonwealth Employees' Rehabilitation and Compensation Act 1988](http://www.austlii.edu.au/au/legis/cth/num_act/ceraca1988534/index.html) (Cth). | See [legislation.gov.au](https://www.legislation.gov.au/Series/C2004A03668). |
| ***SRC Regs*** | [Safety, Rehabilitation and Compensation Regulations 2002](http://www.austlii.edu.au/au/legis/cth/num_reg/sracr20022002n56504/index.html). | See [legislation.gov.au](https://www.legislation.gov.au/Series/F2002B00055). |
| ***State compensation*** | Means compensation recoverable under a law of a State or of a Territory that provides for the payment of compensation, other than workers' compensation, and is declared by the Minister to be a specified law. | See [Summary of Provisions](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#ROSC) in the Preclusion, Suspension and Repayment, for legislative instruments containing specified laws.  ***SRC Act***: section 119. |
| ***State workers' compensation*** | Means compensation recoverable under a law of a State or of a Territory, or of a foreign country, relating to workers' compensation. | ***SRC Act***: section 118. |
| ***stepchild*** | Without limiting who is a stepchild of a person for the purposes of the Comcare Scheme, someone who is a ***child*** of a ***de facto partner*** of the person is the stepchild of the person if they would be the person's stepchild except that the person is not legally married to the partner. | See Note 1 for the meaning of relationships under the Comcare Scheme.  ***SRC Act***: subsection 4(1). |
| ***step-parent*** | Without limiting who is a step-parent of a person for the purposes of the Comcare Scheme, someone who is a ***de facto partner*** of a ***parent*** of the person is the step-parent of the person if they would be the person's step-parent except that they are not legally married to the person's ***parent***. | See Note 1 for the meaning of relationships under the Comcare Scheme.  ***SRC Act***: subsection 4(1). |
| ***suitable employment*** | See discussion of [Suitable Employment](https://www.austlii.community/foswiki/ACTLawHbk/ComcareScheme#SE) in the Rehabilitation section. | ***SRC Act***: subsection 4(1) and section 40. |
| ***superannuation scheme*** | Means any superannuation scheme under which, or retirement savings account to which, the ***employee's scheme employer*** makes contributions on behalf of the ***employee***. | ***SRC Act***: subsection 4(1) and sections 19-21A. |
| **Note 1:** For the purposes of the Comcare Scheme, relationships (including the relationship of being family or being relatives) are taken to include (without limitation):   * relationships between ***de facto partners***; * relationships of ***child*** and ***parent*** that arise if someone is an exnuptial child of a person; * relationships of ***child*** and ***parent*** that arise if someone is an adoptive child of a person (whether adopted under a law of a State or Territory or of a foreign country); * relationships of ***child*** and ***parent*** that arise because of the definitions of ***child*** and ***parent*** under the Comcare Scheme (see defined terms ***child*** and ***parent*** in this table); and * relationships traced through relationships referred to in the preceding points. | | |
| **Note 2:** Unless the contrary intention appears, a reference in [Administrative Appeals Tribunal Act 1975](http://www.austlii.edu.au/au/legis/cth/consol_act/aata1975323/index.html) (Cth) to a decision includes a reference to any of the following:   * making, suspending, revoking or refusing to make an order or determination; * giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission; * issuing, suspending, revoking or refusing to issue a licence, authority or other instrument; * imposing a condition or restriction; * making a declaration, demand or requirement; * retaining, or refusing to deliver up, an article; or * doing or refusing to do any other act or thing. | | |

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