

# Comcare

Claiming workers  
compensation  
under the Federal  
Comcare system

10 things to  
know series



The Australian Federal workers compensation scheme and what you should be aware of during the life of your claim

The “10 things to know series” looks at 10 of the key components of workers compensation claims.

This document looks specifically at your rights and entitlements during the life of your Comcare workers compensation claim.

The Comcare workers compensation system covers Commonwealth public servants and Commonwealth agencies (for example, those employed by the Australian Taxation Office or Australia Post) as well as larger employers, often operating across state boundaries, who have been provided with a specific Commonwealth licence to operate under Comcare.



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## Overview

If you are an employee of one of the organisations covered by Comcare (whether employed full-time, part-time or casual) and you suffer an injury at work, you can claim compensation under the Safety Rehabilitation & Compensation Act 1988 (Cth).

This compensation can be in the form of income maintenance (so you do not need to rely on your personal sick, annual and long service leave), payment of reasonable medical expenses, permanent impairment lump sum compensation, etc.

## Things you must do to claim Comcare compensation

- Notify your employer that you have suffered the injury/disease. Delayed reporting of the injury often causes problems in the future when you decide to lodge a claim. The longer you leave it to report the injury, the harder it will be to successfully claim compensation;
- Even if you do not report the injury/disease to your employer (perhaps because you are worried that you could lose your job), you should seek medical advice from your doctor. If a dispute arises about your claim, the medical records from your doctor can be used to corroborate your version of events;
- Obtain a medical certificate confirming the nature of your injury/disease, the date the injury/disease occurred, the details of any work restrictions and/or details of any time you need off work;
- Lodge a claim form. The Comcare claim form is quite complex and lengthy, and you should seek advice from your Union or lawyer in relation to correctly completing this form.

## The more information you keep, the better your chance of success

Keep as much information as possible regarding your injury and your claim. If you have filled out an incident report form at work, try and obtain a copy of this form.

If you purchase medication for your injury/disease, including pain killers, heat packs, bandages, medical/therapeutic equipment, etc, keep all the invoices.

Keep a copy of any correspondence you receive from your employer in relation to your claim.

Even making a short entry in your diary or email can often help your case in the future if your claim is rejected.

## What injuries/diseases are covered?

Injuries sustained at work or diseases that result from your employment can be covered by the Comcare system. The law distinguishes 'injuries' and 'diseases'.

Physical injuries include direct injuries to a body part (eg, spraining your back, dislocating a knee or shoulder, or even an amputation of a limb) and this can also include an aggravation of a pre-existing injury.

Diseases include psychological disorders, heart conditions, respiratory conditions and strokes, and these diseases can either be directly caused from employment or they are often aggravated or exacerbated by employment.

## Some specific situations where injuries/diseases are covered

There are certain situations where on the face of it, it might not appear that the injury/disease was caused by work, but you may nonetheless be able to make a claim.

For example, if you are injured whilst temporarily performing work duties away from the workplace, you could be protected by the Comcare law.

Similarly, if you are travelling for work or even travelling to obtain medical treatment for your workplace injury, you could be protected. If you are unsure if you have a valid claim, seek immediate advice from your Union or lawyer.

### Some specific situations where injuries/diseases are generally excluded

The Safety Rehabilitation & Compensation Act 1988 contains exclusionary provisions. In other words, even if the injury/disease can be linked to the workplace, specific exclusions may apply. For example:

- If your depression was caused because you were demoted, disciplined or subjected to negative appraisals at the workplace, you may be denied compensation if the conduct of the employer amounted to reasonable administrative action;
- Injuries suffered whilst travelling from work and your home (and vice versa) are also generally excluded;
- If you voluntarily assumed the risk of injury, or caused the injury yourself, you will likely be excluded (although this can be complex because many jobs require the worker to perform very risky work);
- If your injury resulted from your own serious and wilful misconduct, for example, driving a truck whilst under the influence of a prohibited drug.

If your claim has been rejected because of an exclusion under the law, you should contact your Union or lawyer immediately.

### Dealing with the rejection of your claim, or other bad decisions

The law does not provide time limitations on Comcare or the employer to respond to your claim for compensation; however responses usually occur after about a month. If you feel that there have been unreasonable delays in relation to receiving a response to your claim, speak to your Union or lawyer immediately.

If your claim is rejected, or you are unsatisfied with the decision regarding your claim, you have appeal rights. At first instance, you can request a 'reconsideration' of the decision, and this request needs to occur within 30 days of the decision. You should definitely speak to your Union or lawyer regarding this request for reconsideration, because they can often involve a very careful and complicated analysis of the law.

Often the reconsideration does not result in a change to the original decision. If you are still dissatisfied following reconsideration, you can instruct your Union or lawyer to dispute the matter through the Administrative Appeals Tribunal ("AAT"). This is a complex process and you should not attempt to appeal the decision on your own. Appeals to the AAT should be made within 60 days of the reconsideration, which is also known as the 'reviewable decision'.

Other decisions apart from a rejection of the claim can also be disputed, including decisions to cease your benefits if your claim has previously been accepted, or a decision not to pay for certain medical treatment. Furthermore, the employer may make unreasonable decisions about a Return to Work plan or your rehabilitation program.

### Benefits of a successful Comcare claim

If you go to all the trouble of submitting a claim, you need to know what rights you are fighting for. A successful claim entitles you to:

- Reasonable medical expenses; medical expenses can quickly add up (just think of the cost of regular physiotherapy or chiropractic treatment) and you should not be liable for these expenses if the injury/disease is work related. An accepted claim also means that any reasonable surgery expenses, hospital fees, ambulance fee, nursing care and dental treatment is paid for by Comcare or the employer;
- Income support; if you are off work because of your injury/disease, you are entitled to receive your full normal weekly earnings for up to 45 weeks. If you are only able to work reduced hours, you are entitled to receive 'top-up' payments so you are not financially disadvantaged because of your injury/disease. After 45 weeks, you are entitled to receive 75% of your full normal weekly earnings, and if you are only working reduced hours, you are also entitled to top-ups. The calculation of your normal weekly earnings can be complex depending on whether you usually worked overtime, received penalty rates, received other allowances, etc. Again, it's important to seek advice from your Union or lawyer.

### Permanent impairment compensation

In addition to payment of medical expenses and income support, you may be entitled to additional lump-sum compensation as a result of your injury because you are suffering a 'Permanent Impairment'.

Permanent Impairment compensation is a discreet area that does not impact on your other entitlements under the law.

To determine if you are entitled to this type of compensation, your condition needs to be 'stable' and permanent (in other words, enough time has gone by since the injury, and your impairment is unlikely to get much better or worse in the future) and a specific accredited medical assessor needs to assess your injury.

No time limit applies to making a claim for Permanent Impairment compensation.

### What if my employer's negligence caused the injury/disease

If your injury resulted from the negligence of your employer, the Comcare system allows you to elect to sue the employer under 'common law' for your 'non-economic loss'. Once you make a decision to sue under common law, you cannot change your mind, and this decision should not be made without careful consideration. In order to sue under common law, your level of impairment needs to be high enough to entitle you to the type of compensation mentioned in clause 9 above.

You may also be entitled to sue a negligent third party who is not your employer (eg, a negligent colleague, a supplier of plant/equipment that caused the injury).

Strict time limits apply in relation to a common law claim, so you need to seek legal advice if you are planning on going down this path.

### Conclusion

There are many other elements to the Comcare scheme that have not been covered in the above information. For example, Comcare also provides entitlements to spouses and dependents if a worker dies as a result of a work related injury or disease.

The Comcare system is very complicated, and the law is constantly evolving with new litigation being disputed all the time. If you are injured or suffer a disease caused by your employment, and your employer is covered by the Comcare system, you should seek experienced legal advice as soon as possible.