



Issues of Current Interest

This list of 'Issues of Current Interest' is not exhaustive and should be read in conjunction with the Safety, Rehabilitation and Compensation Commission's 'Significant Matter Reporting Policy' when assessing whether a matter should be flagged as potentially scheme significant. **Only Tribunal or Court matters need to be flagged.**

Psychological claims

1. Claims for psychological conditions as injuries (other than a disease), rather than ailments.
2. Claims involving psychological conditions with diagnostic labels outside of the DSM-IV, DSM-V or DSM-V-TR.

Boundary and employment definition issues

3. Claims related to reactions to COVID-19 or COVID-19 vaccine mandates, specifically:
 - a. Post-COVID-19 viral syndrome (long COVID-19);
 - b. Injuries attributed to vaccine mandates.
4. Boundary, recess, and place of work issues, including:
 - a. what constitutes a 'place of work' while working from home
 - b. an employee suffering injury entering or exiting a place of work
 - c. the boundaries of a place of work.
5. Claims where an issue in dispute is whether:
 - a. a causative factor should be considered 'employment'
 - i. For example, rehabilitation processes, claims management processes, and litigation,
 - ii. Or in circumstances where the injury is alleged to have arisen in the course of employment where the employee was:
 1. on a long-term posting where the employee relocated their place of residence; or
 2. between discrete periods of work (i.e. while on leave or after work hours).
6. Claims for an injury (other than a disease) where an issue in dispute is whether the 'arising out of employment test' is
 - a. equivalent to the 'material contribution test'; or

- b. is met by an injury (other than a disease) where the condition also satisfies the definition of an ‘ailment’ but does not meet the ‘significant contribution’ test.

Jurisdictional or interpretation questions

- 7. Questions regarding the Tribunal’s jurisdiction in relation to any condition that has not been the subject of a s 53 notice, a s 54 claim, a s 60 determination, and/or a s 62 reviewable decision.
- 8. Claims where an issue in dispute is whether the reasoning in *Canute v Comcare* [2006] HCA 47 – that compensation is injury-based – applies to all entitlements in addition to permanent impairment.
- 9. Accepted claims where an issue in dispute is whether a new condition is accurately characterised as a new injury or if it forms part of the original injury.
- 10. Issues in dispute where the application of regulation timeframes for decision-making provisions are concerned.
- 11. Litigation involving the application of ss 44 or 48 of the SRC Act.
- 12. Litigation involving s 57 reviewable decisions, including the application of the provisions of the Guide to Arranging Rehabilitation Assessments and Examinations.

Calculation of NWE and application of the Permanent Impairment Guide

- 13. Claims involving the application of the approved Guide (edition 3.0) using the 9.13.3 Chronic Pain Syndrome or Chronic Regional Pain Syndrome table.
- 14. Calculation of Normal Weekly Earnings where the application of s 8(10) is in dispute.

Deemed diseases and novel treatment

- 15. Litigation involving rebuttal of prescribed or deemed disease claims involving ss 7(1), 7(2), 7(3), 7(8) or 7(11) of the SRC Act.
- 16. Claims for novel or emerging medical treatment where there is little or no research evidence to support its efficacy.

Contact

If you have any queries about this guide or about potentially scheme significant matters, please contact Comcare’s Legal Group: LitMonitoring@comcare.gov.au