



July 2020

Significant Matter Reporting Policy

Introduction

1. This policy outlines the expectations of the Safety, Rehabilitation and Compensation Commission (the Commission) and Comcare for bodies (collectively the Determining Authorities) to provide information on matters that are likely to be significant for the scheme. The Determining Authorities are authorised to determine and manage claims under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act)¹

Who does this policy apply to?

2. This policy applies to all Determining Authorities — Comcare, the Military Rehabilitation and Compensation Commission (MRCC), and all corporations and Commonwealth authorities that hold a licence under Part VIII of the SRC Act (licensees), as well as the Commission and Comcare (in relation to Comcare’s functions under the SRC Act in addition to Comcare’s role as a Determining Authority).

Roles and responsibilities of the Commission

3. The Commission has various functions and powers which require it to remain informed of developments relating to the SRC Act. For example:
 - preparing guidance for Determining Authorities—including licensees—in relation to the application and interpretation of the SRC Act²;
 - advising the Commonwealth government about any matters relating to the operation of the SRC Act including any resulting policy considerations³; and
 - ensuring that Determining Authorities are informed generally about scheme significant developments⁴.
4. The SRC Act also provides for the Commission to restrict licensees from making submissions to a court or tribunal⁵.

¹ The MRCC is authorised to determine and manage claims under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Defence Related Claims Act).

² For example, see s73A SRC Act.

³ For example, see ss 89B(b) and 89D SRC Act. Section 21 of the *Safety, Rehabilitation and Compensation Directions 2019* (Cth) made under s89D SRC Act imposes reporting obligations on the Commission.

⁴ For example, see s89C SRC Act.

⁵ Section 108D(1)(f) SRC Act.

Roles and responsibilities of Comcare

5. Comcare is responsible for assisting the Commission in the day-to-day discharge of the Commission's roles and responsibilities⁶. In addition, Comcare has an independent role in preparing guidance for Determining Authorities⁷ and advising the Commonwealth government about the scheme⁸.
6. In support of that role, the SRC Act and the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Defence Related Claims Act):
 - require licensees and the MRCC to inform Comcare as soon as practicable where court or tribunal proceedings have been commenced against them;⁹ and
 - allow for Comcare to join such proceedings¹⁰.
7. The SRC Act also provides for Comcare to restrict licensees from making submissions to a court or tribunal¹¹.

Roles and responsibilities of Determining Authorities

8. Licensees are required to assist the Commission and Comcare in the exercise of their respective functions.
9. A licensee and any person acting on its behalf is required to comply with the requirements of the SRC Act and any relevant directions given by the Commission as part of the standard licence conditions¹².
10. The SRC Act and the standard licence conditions requires licensees to inform Comcare as soon as practicable where court or tribunal proceedings have been commenced either against or by them.
11. Standard licence conditions also enable the Commission to require a licensee to provide requested information relating to the licensee's operations under the SRC Act.
12. The SRC Act provides that licensees will not make submissions to a court or tribunal that Comcare or the Commission has requested the licensee not to make¹³.

Reporting significant matters

Significant matters

13. To fulfil the roles and discharge the responsibilities outlined above, the Commission and Comcare need to be aware of any Administrative Appeals Tribunal (Tribunal) and court matters (matters) which may impact on the application and scope of the SRC Act or which may affect the development of the workers' compensation scheme that the SRC Act establishes. That is, the Commission and Comcare need to be aware of any Tribunal or court matter that is likely to have a significant impact on the scheme.
14. Most matters are not likely to be significant. They will turn on their own facts and/or apply settled principles with no ramifications for the scheme more broadly¹⁴. To distinguish these 'routine' matters from those that are more likely to impact on the scheme, Comcare has developed a Significant Matters Guide (the Guide), available [here](#). It describes principles that apply in assessing whether a matter is likely to be significant and some of the features of such matters.
15. It is important to note that the Guide is not intended to be comprehensive. There may be matters that are significant for the scheme even though they may not have any of the features or fit into any of the categories of significance detailed in the Guide.

⁶ Section 72A(1).

⁷ For example, see ss 41, 69(e), and 69(f) SRC Act.

⁸ For example, see s 69(fa) SRC Act.

⁹ Section 108C(8)(a) SRC Act; section 144(7)(a) Defence Related Claims Act.

¹⁰ Sections 108C(8)(b) SRC Act; section 144(7)(b) Defence Related Claims Act.

¹¹ Sections 108D(1)(f) SRC Act.

¹² Section 108D(1)(a) SRC Act.

¹³ Section 108D(1)(f) SRC Act.

¹⁴ That is, beyond determining the issues between the applicant and the Determining Authority.

Identifying significant matters

16. As noted above, the SRC Act and licence conditions require Determining Authorities to “inform Comcare as soon as practicable” of all SRC Act proceedings which are brought against them¹⁵. However, Determining Authorities only need to provide further information regarding matters considered to be significant for the scheme. Determining Authorities need to consider at the outset whether a matter is in fact significant for the scheme by applying the principles and criteria set out in the Guide.
17. Determining Authorities should regularly review matters for significance to the scheme. Issues of significance for the scheme may become apparent as a matter progresses even though an initial review against the Guide may not have identified any such issues of significance. Key events that warrant a review of the significance of a matter include:
 - commencement of proceedings
 - a Tribunal conference
 - service (by or on the Determining Authority) of Notices Of Facts, Issues And Contentions
 - when a matter is listed for interlocutory or final hearing
 - a hearing of the matter (including the hearing of interlocutory applications)
 - a decision
 - on appeal to a court¹⁶.

Informing Comcare that a matter is significant

18. Licensees currently provide information to Comcare via the ‘Commission Data Warehouse’ (the CDW). Comcare’s decision makers also provide information via the CDW.
19. Licensees and Comcare’s decision makers must inform Comcare through the CDW when it becomes apparent that a matter is potentially significant for the scheme.
20. In addition to using the CDW, the Determining Authority should also inform Comcare of the matter through email or telephone.
21. The MRCC should inform Comcare by an appropriate method reasonably determined by Comcare.

Trigger events and reporting on significant matters

22. Determining Authorities are not required to provide any information (beyond that which is required to be entered in the CDW) about a potentially significant matter for the scheme unless a trigger event occurs.
23. The first *trigger event* that requires the Determining Authority to inform Comcare is the commencement of the matter.
24. The second *trigger event* occurs if the matter fails to resolve within five business days of the first Tribunal conference or alternative dispute resolution process (collectively the First Return). The Determining Authority must provide Comcare with the *initial materials* within a *reasonable timeframe* if this *trigger event* occurs.
25. *Initial materials* will include the initial determination, the request for reconsideration, the reviewable decision, the application to the Tribunal or court, the reason for considering the matter as potentially significant for the scheme, and any other information or documents which the Determining Authority considers necessary to understand the substance and significance of the matter.
26. Five business days is usually considered to be a *reasonable timeframe*, unless there is a good reason for a longer or shorter period.

¹⁵ Section 108C(8)(a) SRC Act; section 144(7)(a) Defence Related Claims Act.

¹⁶ Note that all court matters are considered scheme significant.

27. Service of other *key materials* either by or on the Determining Authority during the proceedings of the matter will constitute a trigger event. Copies of the corresponding *key material* should be provided to Comcare within a *reasonable timeframe*.
28. *Key materials* include statements of facts, issues and contentions; submissions; interlocutory and other applications (including notices of motion); interlocutory decisions; and any other material that is part of the proceedings. They do not, however, ordinarily include any evidence or T-Docs.
29. If the Determining Authority recognises that a matter is significant at a point after trigger events have occurred, then the Determining Authority should provide the *initial material* and *key materials* (as the case may be) within a *reasonable timeframe*. In addition to informing Comcare of the matter, Determining Authorities should consider any request from Comcare in relation to the matter—whether for information, discussion, or otherwise—as a *trigger event* requiring a response within a *reasonable timeframe*.
30. To assist with identifying the key *trigger events* and the information that the Determining Authority must provide within a reasonable timeframe of those *trigger events*, Comcare has developed a *Trigger events and reporting procedure*, available [here](#).

Power to request information

31. Comcare has power under all licences to request information regarding proceedings that may be considered significant for the scheme¹⁷:
32. The Licensee must give to Comcare, within the timeframe specified in the request, any information or documents that Comcare requests in respect of any court or tribunal proceedings in relation to a matter arising in respect of a claim managed by the Licensee under the SRC Act. Section 71 of the SRC Act further provides that:

the principal officer of an Entity, a Commonwealth authority or a licensed corporation [is] to give Comcare within such period as is specified in the notice, such documents or information (or both) as are specified in the notice, being documents or information in the possession, custody or control of the Entity or authority that are relevant to a claim made by, or in relation to, an employee of the Entity or authority or that relate to the performance of functions or the exercise of powers by the principal officer under Part III.
33. Comcare may call on those powers to request specific information relating to discrete proceedings if necessary.

Maintaining legal professional privilege and privacy obligations

34. Disclosing information to Comcare in the way this policy contemplates may, in some instances, raise questions of legal professional privilege (LPP) despite appropriate caveats and assurances and in confidential circumstances¹⁸. To avoid any doubt, Comcare and the Commission will not usually require Determining Authorities to provide legal advices.
35. Nevertheless, Comcare may request documents which contain legal advice in some circumstances. On those occasions, Comcare and the Determining Authority should discuss the risk of waiving LPP and attempt to address and resolve any concerns in good faith.
36. Similarly, some of the information which Determining Authorities may be asked to provide under this policy is ‘personal information’ as defined by the *Privacy Act 1988* (Cth). Such requests must be dealt with in accordance with the Australian Privacy Principles (APPs) contained within the Privacy Act. Determining Authorities should ensure that in providing information under this policy, they do not breach the APPs. Usually, there will be limited risk of breach if the Determining Authority’s claim forms feature appropriate consent for the disclosure of personal information for this specific purpose. However, the Determining Authority should contact Comcare if it is concerned that provision of certain information may risk breaching the APPs. For example, Comcare could issue a request pursuant to the licence condition described above; information provided in response to such a request would then be provided under legal compulsion and exempt from restrictions on use and disclosure (that is, APP 6.1(b) and 6.2(b)).
37. Information provided to Comcare may be subject to a request for information under the *Freedom of*

¹⁷ See s108D(1)(h) of the SRC Act and s 13(1)(a) of the *Safety, Rehabilitation and Compensation Directions 2019*.

¹⁸ In the discharge of a legal obligation and in order to support the Commission and Comcare in the discharge of their statutory functions.

Information Act 1982 (Cth). The decision maker will consider all applicable exemptions when making a decision about the release of documents and will consult with the Determining Authority if required.

Comcare action

38. Comcare will take appropriate action in response to the information it receives from Determining Authorities. In addition to reviewing the information, it will conduct an internal assessment, liaise and discuss issues with the Determining Authority, and decide on the appropriate action (if any) including attending relevant listings, joining the proceedings, and/or taking a policy response.

Compliance with reporting process

39. Comcare undertakes several monitoring practices to ensure Determining Authorities comply with this policy.

Secondary monitoring

40. Comcare monitors electronic lists, databases of Tribunal and court decisions, and third-party information and news sources, for references to significant matters. This allows Comcare to verify, usually after a decision has been made, whether correct information was provided about a finalised matter and whether a matter not previously flagged is in fact scheme significant.
41. In addition, Comcare compares the data in reports provided by the Federal Court and the Tribunal to the data which is provided by Determining Authorities. This assists Comcare to identify when general information about current matters—such as the number of applications and relevant dates—is not consistent with information provided by the Determining Authority.
42. Evidence of compliance includes:
 - procedures for communicating relevant information to Comcare
 - court proceedings have been reported to Comcare
 - there is an appropriate flag (in CDW systems) for AAT matters.
43. Auditors should consider compliance with this policy when assessing criteria 4.5 of the Claims Management System Audit Tool.