



Australian Government

Comcare

Significant Matter Guide

What is this guide for?

Comcare and the Safety, Rehabilitation and Compensation Commission (the Commission) monitor proceedings that have the potential to be significant for the scheme as part of their statutory role to administer the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

This guide is intended to help Determining Authorities identify and report matters that may be significant for the scheme. The guide is based on the significant matter reporting policy endorsed by the Commission in December 2013. The guide provides a set of principles to be applied in determining whether a matter is potentially significant for the scheme.

Guiding principles

These principles should guide the consideration of whether a matter falls within any of the more specific categories.

1. Proceedings are potentially significant for the scheme when they have broader implications for the workers' compensation scheme under the SRC Act and which go beyond the resolution of the dispute and particulars of the case at hand.
2. Matters are unlikely to be significant for the scheme if they are merely a dispute about the facts or an application of SRC Act provisions to particular facts using settled interpretation of those provisions.
3. Determining Authorities should apply a common-sense approach, taking into account current advice from Comcare about SRC Act policies and issues of current interest.
4. The Determining Authority should flag a matter for consideration by Comcare if the Determining Authority is in doubt about the significance of the matter to the scheme.

Specific categories: when is a matter significant?

Matters that are likely to be significant for the scheme include proceedings with one or more of the following features.

1. *Clarification of the law*

Interpretation or application of:

- a. the SRC Act that may assist to clarify the law, particularly where there is little or no existing case law.
- b. other Commonwealth or State laws that appear to result in potential inconsistencies with the SRC Act or vice-versa.

2. *Escalation of AAT proceedings*

Allocation of Administrative Appeals Tribunal (Tribunal) proceedings to the President or Deputy President may indicate that statutory construction is required and should trigger a consideration of the matter as having the potential to be significant for the scheme.

3. Inconsistent with current policy

Interpretation or application of the SRC Act that may be inconsistent with or affect Comcare's published policies as detailed, from time-to-time, in Jurisdictional Policy Advices and Scheme Guidance.

4. Undermine scheme integrity

Where a court or Tribunal may interpret the SRC Act such that the quantum of compensation in similar future claims, or number of compensable claims, is likely to increase substantially and/or potentially place pressure on the sustainability of the scheme.

5. Interpretation of new legal developments

The court or Tribunal may consider:

- a. recently developed case law related to the SRC Act;
- b. recently enacted statutory changes to the SRC Act, Regulations or statutory instruments;
or
- c. legislation that is currently under review or proposed for change.

6. Court appeals

The matter is being heard by the Federal Court, Federal Circuit Court, the High Court or state courts (including matters that are remitted to the Tribunal).

7. Jurisdictional disputes

Disputes regarding Commonwealth or State jurisdiction (this may include matters heard in State courts or Tribunals).

8. AAT jurisdiction

Disputes about the extent of the court's or Tribunal's jurisdiction to determine issues in the matter. As jurisdiction is usually determined at interlocutory hearings, such a listing should trigger a review of the matter as potentially significant for the scheme.

9. Sensitive matters

Matters of significant public interest or otherwise involving highly sensitive issues for the Agency, the Commission, Comcare or the Commonwealth government. For example, matters involving high profile individuals or sensational facts.

10. Issues of Current Interest

Matters which feature an issue that Comcare has identified in the 'Issues of Current Interest' policy bulletin.