

Comcare Workers Compensation.

Delegates guide.



The [Safety, Rehabilitation and Compensation Act 1988](#) (SRC Act) sets out workers compensation and rehabilitation arrangements for:

- Employees of Australian Government agencies and statutory authorities
- Employees of organisations who have been granted a [licence to self-insure](#).

An employee can claim compensation if they believe their injury or illness occurred at work - was significantly contributed to or aggravated at work.

An injury or illness has occurred at work if it occurred while:

- Away from work but undertaking work-related business, or
- Travelling for work.

Injured at work? Follow these key steps.

1. Notify (report) your injury
2. Seek medical treatment and obtain a medical certificate
3. Make a claim (submit claim form with medical certificate)

Report the injury.¹

Where an employee sustains a work-related injury, they should report this to their supervisor as soon as possible and make sure it is recorded in the injury record book. The employer will have procedures on how to report your injury. If an employee fails to report an injury this could adversely affect a later claim.

A member should also ensure that their Delegate² and Health and Safety Representative (HSR) are notified. The Delegate will provide direct assistance to an injured member, whilst the HSR will commence an investigation - so as to avoid others becoming injured in a similar way.

- All injuries must be reported to the supervisor as soon as possible and make sure it is recorded in the injury book.
- Injured employees should create a workers' compensation file, keeping copies of all inward and outward correspondence and make records of every interaction in relation to the workplace injury.

It is important that the injured employee at this stage creates a file, keeping copies of all inward and outward correspondence and makes records of every interaction in relation to the workplace injury (i.e. phone calls, workplace meetings).

Seek medical treatment and obtain a medical certificate.

An injured employee should only see their doctor (their normal GP), never attend a company doctor and never allow a representative of the employer into a medical appointment (regardless of what justification they provide). The choice of an employee's own doctor and treatment providers is a right.

For a claims manager to consider an employee's claim for compensation, employees must include

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a medical certificate provided by a medical practitioner. Comcare's preferred medical certificate is the certificate of capacity as it fulfils the legal requirements of the SRC Act.

The claims manager can arrange payment for the initial (first visit) certificate fee in New South Wales and the Northern Territory. Other Australian states and territories incorporate the cost of certificates into their fee structures.

An injured employee should only sign the [certificate of capacity](#) if they agree that all the information is correct and that they wish to nominate that doctor as their ongoing treating doctor. Make sure the medical certificate provides a clear diagnosis and not simply a description of the symptoms. Medical evidence must support the claimed injury.

- An injured employee has the right to seek treatment from their own doctor.
- For initial treatment, an injured employee does not have to attend the employer's preferred medical practitioner. The AMWU advises against attending a company doctor.
- Never allow a representative of the employer into a medical appointment (regardless of what justification they provide).
- Make sure the medical certificate provides a clear diagnosis and not simply a description of the symptoms.

Submitting a workers compensation claim form.

The making of a claim must be done early, the Comcare scheme (unlike others) does not have legislated timeframes for insurers to comply

with. As such processes quite often are not timely. No claim is too small. Employees should submit a claim form with the medical certificate for all injuries, including any medical and pharmaceutical receipts.

For Comcare (employees of Australian Government agencies and statutory authorities) submitting a claim through its [online form](#) is the most efficient way to provide them with information.

- If Comcare takes an unreasonably long time to decide a claim, the employee should contact the Comcare Team Leader. If that doesn't help, the employee should contact the [Commonwealth Ombudsman](#) to investigate the delay.

For employees of organisations who have been granted a [licence to self-insure](#), the employer must provide the employee with a claim form upon request.

- If a self-insured employer takes an unreasonable time to decide a claim, the employee should contact the Workers Compensation Manager. If that doesn't help, the employee should make a complaint to the [Safety, Rehabilitation and Compensation Commission](#). The Commission may consider acting on the concerns raised, including conducting its own investigation of the employer to determine if a breach has occurred.

- The AMWU can assist members in lodging complaints and/or refer members to a specialist law firm to assist processing a claim.

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- Don't allow an injured employee to be persuaded by the employer that making a claim will not be necessary.
- An injured employee should complete a claim form and submit it with a medical certificate supporting the claim as soon as possible.
- When completing the claim form, ensure there are clear details of the time and date of the injury and any witnesses.
- For complex claims (i.e. mental health), provide clear and relevant details on the claim form. Include details of as many work-related episodes as possible that may have contributed to the final illness. For example, 'throughout the course of my employment and in particular on...' (include specific date/s and episode/s). All evidence and statements must show how the injury or illness is related to employment.
- Consider including witness statements to support a claim.
- If the employee has suffered from a similar injury or illness before, even if it was a long time ago, make sure you mention this on the claim form.
- Make sure that the job description includes the duties being carried out when the injury was sustained.
- Only submit medical reports that support the claim.
- An employee cannot be terminated because they have made a claim or are recovering from a workplace injury.
- An injured employee must comply with any reasonable request from an insurer regarding medical appointments.



What can be claimed.

- [Medical Treatment costs](#)
- Medical related [travel costs](#)
- [Care Services](#)
- [Household Services](#)
- [Aids, Appliances, Modifications](#)
- [Lump Sum Payments](#)
- [Death and Funeral Benefits](#)

Weekly Income Support

- Incapacity payments received in the first 45 weeks following an injury are payable at a rate equal to 100% of your normal weekly earnings (calculated based on your salary at the time of injury and may include overtime and allowances if relevant) - less any amount you are currently earning.
- From 45 weeks your incapacity payments are calculated based on the percentage of actual hours worked during the week.

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Per cent of normal weekly hours worked	Compensation payable
Did not work	75% of normal weekly earnings
25% or less	80% of normal weekly earnings
More than 25 % but not more than 50%	85% of normal weekly earnings
More than 50% but not more than 75%	90% of normal weekly earnings
More than 75% but less than 100%	95% of normal weekly earnings
100% of normal weekly hours	100% of normal weekly earnings minus actual earnings

Workplace Rehabilitation.

Rehabilitation Authority - The employer has the responsibility and authority to manage the return to work of injured employees and is referred to as the 'rehabilitation authority'.

Rehabilitation Case Manager - Each rehabilitation authority will have at least one Rehabilitation Case Manager whose role it is to coordinate the employee's rehabilitation including arranging rehabilitation assessments or determining rehabilitation programs.

Workplace Rehabilitation Provider - This organisation or person is accredited by Comcare and undertakes rehabilitation assessments and develops tailored rehabilitation programs. Employees can request a change in provider

where they feel the service they are receiving is not satisfactory (despite the provider being controlled by the rehabilitation authority).

Independent Medical Practitioner (IMP) - Appointments to these medical practitioners are organised by the Rehabilitation Case Manager. Despite the name, they are anything but independent. Attendance is generally required unless an employee has a reasonable excuse. When an injury occurs the Rehabilitation Case Manager may arrange a rehabilitation assessment, particularly where there is a strong likelihood of incapacity for work. The purpose is to inform the development of a rehabilitation program. The assessment can be carried out by a rehabilitation provider, an independent medical practitioner or a medical panel as nominated by the employer. An employee can have their benefits suspended

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for non-compliance regarding a rehabilitation examination unless there is a reasonable excuse. An employee can request that medical examinations be timed and located according to the restrictions imposed by their injury.

A Rehabilitation Program (also called return to work plan) (RTW) - is to deliver structured activities and services which will assist with recovery either at work or, where this is not medically possible, helping the employee regain their ability to perform activities of daily living. The program must be developed in consultation with the injured employee.

- Injured employees should never meet with any representative of the employer/insurer without a delegate. This includes when developing the rehabilitation program.
- An injured employee should never agree to anything over the phone and should ask for all requests to be put in writing.
- An injured employee must be provided with suitable duties in line with their medical capacity.

Case conferences (return to work).

A case conference must be collaborative and actions arising from a case conference must be agreed and incorporated into the rehabilitation program.

A case conference is an opportunity to:

- Set goals that are specific, measured, achievable, relevant, and timely (SMART)
- Consider the employee's capacity for work
- Identify barriers that may be impacting an employee's return to work
- Agree on the support an employee needs to recover at, or return to, work. (This can

include flexible work arrangements, adjusting the workplace or workplace equipment, or alternative duties)

- Decide who is responsible for actions

People who may be involved in a case conference meeting are:

- Injured employee
- Injured employee's support person (i.e. Delegate)
- Supervisor
- Rehabilitation case manager
- Medical practitioner, such as general practitioner (GP), psychologist, physiotherapist, or specialist
- Workplace rehabilitation provider
- Claims manager

The Rehabilitation Case Manager or the Workplace Rehabilitation Provider will discuss the purpose of the RTW case conference with the injured employee, their GP and other attendees prior to making an appointment (there should be no surprises).

They will develop a plan for the RTW case conference that will include:

- When and where the RTW case conference will be held (this will usually be your GP's rooms)
- Who will attend
- What will be discussed including the goal for the discussion and what supports the injured worker may need to assist in their recovery and RTW
- What background information will be included to assist the discussion and planning for a return to work.

Participants should be given enough time to contribute to the draft plan before it is finalised and circulated. There must be agreement on the purpose of the case conference. A case conference should not occur without the employee's consent.

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An employee can request a case conference at any time to discuss recovery and return to work. An employee has the right to be represented at a case conference and should never attend a case conference without a Delegate. There are instances of Case Managers using the opportunity of case conferences to ambush employees and seek to wedge an injured employee and their treating doctor. If this occurs seek to adjourn the case conference. Following a case conference, the employee is to receive a completed (signed) case conference plan.

Further information on case conferences can be found [here](#).

- There must be agreement on the purpose of the case conference.
- A case conference should not occur without the employee's consent.
- An employee has the right to be represented at a case conference.
- Following a case conference, the employee is to receive a completed (signed) case conference plan.

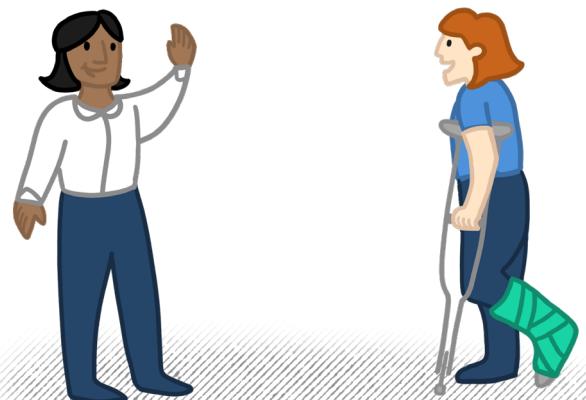
Early intervention programs.

Many Rehabilitation Authorities (employers) have adopted, on the advice of Comcare, early intervention programs for injured employees. Early intervention is touted as seeking to reduce the impact and duration of emerging symptoms and/or injury and can commence regardless of a claim having been made. Generally, employees are referred to a general practitioner, physiotherapist, or psychologist (company doctors and allied health professionals) for a limited number of appointments at no charge to the employee.

Employees caught up in these programs (which fall outside of the SRC Act) have a smaller likelihood of lodging a claim, leaving them without entitlements they otherwise would have received and suffering more out-of-pocket expenses. Should an employee belatedly make a claim, the claims process is delayed. The employer will have in their possession medical records and files which have been collected by the company doctors and/or allied health professional(s) that can be sometimes turned as evidence to defeat a claim. If an employer pays for medical services and reports, they are the owner of the employee's personal medical information.

Members should avoid early intervention programs if possible and meet the costs of timely treatment and diagnostics as they would normally (i.e. Medicare). If a member does choose to participate in a program, they should make a claim first and never provide a signed consent for the employer to be provided with any medical information from the company doctors and/or allied health professional(s).

- An injured employee should never participate in an 'early intervention' program unless they have first lodged a claim.



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Disputes.

Where an insurer makes a decision regarding a claim (i.e. weekly benefits or medical), this is known as a determination. If at any time the insurer writes to the employee advising of a determination disputing any part of the claim, contact our union immediately. A determination must be in writing and must set out the employee's rights. A reason must be provided by the insurer for the decision.

A request for a reconsideration (review) must be made within 30 days of receiving the determination. Once a reconsideration is made by the insurer, it will be provided to the employee in writing and is expected to be completed within 60 days following the receipt of evidence.

Should a dispute still exist following a reconsideration, the employee may have the matter taken to the Administrative Appeals Tribunal (AAT). This must be lodged within 60 days of receipt of the reconsideration.

- If at any time the insurer writes to the employee advising of a determination disputing any part of the claim, contact our union immediately.
- After receiving written advice from an insurer disputing liability, an employee should never participate in any request to attend a medical appointment.
- Any document held by the insurer/rehabilitation authority must be provided to the injured employee following their request (s59).

Further information

- The [Comcare Website](#)
- The [AMWU Website](#)
- The [IWSN Website](#)

Endnotes

1 For the purpose of this guide reference to injury includes illness such as mental illness.

Note: The information provided here is for guidance only, whilst all care has been taken to ensure the information is accurate (as of June 2020), legal advice should be taken directly from our union's lawyers.

2 For the purpose of this guide reference to Delegate means an elected AMWU Union Delegate.