

Employees under the SRC Act

Liability

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Introduction to employees under the SRC Act

When a new claim is received, you must be satisfied the claim has been lodged by or on behalf of an employee as defined under section 5 the SRC Act, or the relevant Commonwealth Act at the date of injury. If not, then coverage does not exist for the person under the SRC Act.

Comcare makes decisions on workers' compensation claims received from current and former:

- employees of the Commonwealth or Commonwealth authorities including persons employed under a contract of service or apprenticeship
- members of the Australian Federal Police
- persons declared by the Minister to be Commonwealth employees
- persons taken to be employed by the Australian Capital Territory as declared under s5(15)

Note: Employees who work for Members of Parliament staff are employed under slightly different arrangements than other Commonwealth employees. Employees who work for Members of Parliament* are employed on behalf of the Commonwealth under the *Members of Parliament (Staff) Act 1984* (MOP(S) Act). Although not employed under the *Public Service Act 1999* (like most Commonwealth employees) they are still considered 'a person who is employed by the Commonwealth' and are therefore 'employees' in accordance with section 5 of the SRC Act.

- Claims for compensation from Parliamentarian's are managed by the Specialised Claims team under the [Parliamentary Injury Compensation Scheme \(PICS\)](#).

ACT employees

Since 1 March 2019, the ACT Government has been responsible for the management of its workers' compensation claims under the SRC Act with a date of injury from 1 July 1989 onward. Comcare continues to be responsible for managing claims with a date of injury prior to 1 July 1989. While there are transitional arrangements in place for existing claims, all claims for compensation after this date (1 July 1989) are to be referred to ACT. Comcare is no longer the decision maker for claims from these employees. This applies to:

- employees of the ACT Government with a date of injury from 1 July 1989 onward.
- a member of the ACT Fire and Rescue Service within the meaning of the Emergencies Act 2004 of the Australian Capital Territory whose position included engaging in any firefighting and related activities

As part of ACT Government moving to self insurance arrangements, a [Memorandum of Understanding \(MOU\)](#) between ACT Government and Comcare was put in place between the two agencies to clarify claims management arrangements.

If an ACT Government claim for workers' compensation with a date of injury after 1 July 1989 is received by Comcare, then it is the responsibility of the ACT Government to manage and should be returned to the originator as outlined in the MOU.

If you are uncertain whether a person is an employee under the SRC Act, you should discuss the claim with your Assistant Director.

If you have any queries about an ACT Government claim matter, please contact [REDACTED].

What to do if a closed ACT Government claim is reopened?

Comcare and the ACT Government agreed that all open and some closed claim files with a date of injury post 1 July 1989 would be transferred to the ACT Government.

Comcare retained a cohort of ACT Government's closed claims (but fall within the scope of the ACT Government's self-insurance licence).

Where a closed claim that falls within the ACT Government's self-insurance licence is reactivated, Comcare will advise the ACT Government and transfer the claim file as outlined in the MOU. More information about this is contained in the [MOU](#).

System changes

PRACSYS changes were implemented on 18 February 2021 to identify ACT Government claims that fall within the scope of their self-insurance licence and that Comcare do **not** manage. This will assist Comcare to ensure we manage only the claims we are responsible for.

Claims which are part of this cohort have a highlighted panel in the *'Team'* name in the claim details header (the same as claims managed externally under delegated arrangements). Additionally, DOCSYS provides a warning message regarding these claims so that documents are not uploaded onto the claim files.

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Persons declared by the Minister to be employees

Under section 5(6) of the SRC Act, the Minister may declare persons to be employees of the Commonwealth who engage in activities, or perform acts, that are at the:

- request or direction, for the benefit, or under a requirement made by or under a law, of the Commonwealth, or
- request or direction, or for the benefit, of a Commonwealth authority or a licensed corporation.

Note: Compensation coverage relates only to the performance of such acts as specified in the particular notice.

A [list of persons declared to be Commonwealth employers under section 5\(6\) of the SRC Act](#) is available in the online [Annotated SRC Act](#).

Commonwealth Rehabilitation Services

Commonwealth Rehabilitation Services (CRS) clients were declared to be employees under section 5(6) of the SRC Act. CRS clients are persons who are being rehabilitated with the CRS. They were deemed to be employees if they sustained an injury while undertaking their rehabilitation program, receiving training or treatment provided by CRS, including travelling to and from that place before 1 July 2007. However, the declaration was revoked on and from 1 July 2007. This means only claims with an injury date prior to 1 July 2007 can still be considered under the SRC Act.

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Persons not covered by the SRC Act

The SRC Act does not apply to:

- judges
- members of Parliament and Ministers of State
- employees of the Public Service of an external Territory (such as Norfolk Island)
- Seamen who are covered under the *Seafarers' Rehabilitation and Compensation Act 1992*.

Note: Members of Parliament and Ministers of State may be covered under the Parliamentary Injury Compensation Scheme (PICS) which came into effect on 1 January 2016.

Persons working in specific places or roles

A CM may receive a new claim from a person claiming to have worked in a specific place or in a specific role. Below are some scenarios of persons working in specific places or roles that a CM should familiarise themselves with:

South East Asia Treaty Organisation (SEATO) aid program

Civilian nurses from Australia were employed under contract by the then Department of External Affairs (now the Department of Foreign Affairs and Trade) and assigned to work in Vietnam as part of Australia's involvement there under the Commonwealth Government's SEATO aid program.

Note: The Commonwealth authority with responsibility for the function under which the SEATO aid program was set up was AusAID. AusAID was integrated into the Department of Foreign Affairs and Trade.

Nurses who were contracted under the SEATO Aid program that have been diagnosed with any condition which they believe developed as a result of their employment in Vietnam are able to submit a claim to Comcare for consideration under the SRC Act.

Information or documents that a SEATO nurse can provide to assist in the consideration of their claim includes, but is not limited to:

- details of the injured worker's period of employment or a copy of their employment contract (if available)
- details of the injured worker's duties in Vietnam including their dates of service and where they worked (or approximations of the relevant dates if the exact dates are not available)
- copies of any other information/documents that the injured worker may have in their possession that can assist in the consideration of their claim (e.g. copies of correspondence from their employer during that time), and

- copies of any medical reports that the injured worker may have in their possession that is relevant to their claimed condition.

Note: From the 1 July 2019 the *Treatment Benefits (Special Access) (Consequential Amendments and Transitional Provisions) Bill 2019* provides for medical treatment through a Department of Veterans' Affairs treatment card ('gold card') for SEATO Nurses. Once a SEATO Nurse has access to the DVA Gold Card, they lose access to their medical entitlements under the SRC Act.

Australian Broadcasting Corporation (ABC)

In February 2005, the media reported a high level of breast cancer amongst employees at the ABC Toowong workplace. As a result, Queensland Health conducted investigations which acknowledged that there was an unexplained statistical excess of breast cancer occurrences and that there was no plausible exposure that would explain the elevated number.

On 13 July 2006 the ABC announced an independent review panel of experts had been commissioned to conduct an investigation. The final report, dated 13 June 2007, found that the occurrence of breast cancer among employees of ABC Toowong was unusually high when compared to the incidence of breast cancer in the general community.

Note: If a CM receives a claim from an employee employed by the ABC in Toowong, further advice can be sought from Claims Strategy and Governance- Help desk decision support.

F-111 Deseal/Reseal programs

Deseal/Reseal (DSRS) programs were conducted from 1973 at the RAAF Base in Amberley. Activities undertaken consisted of periodic removal of sealing inside F-111 aircraft fuel tanks and replacement with new sealant to stem leaks. Some employees spent significant amounts of time in the fuel tanks and were exposed to jet fuel and chemicals. The employees' protective garments were inadequate and throughout the program employees identified various medical conditions that appeared to be related to DSRS chemicals. Other employees, although not involved in tank entry, also had an increased risk of exposure due to the nature of their duties.

A Board of Inquiry was established in 2000 to examine the effects on employees of possible chemical exposure during all the DSRS programs. This culminated in the Study of Health Outcomes in Aircraft Maintenance Personnel (SHOAMP).

Note: If a CM receives a claim from an employee claiming chemical exposure during a DSRS program, further advice can be sought from Claims Strategy and Governance- Help desk decision support.

Radiation claims arising from British nuclear tests

Between 1952 and 1957 the British Government with the agreement of the Australian Government carried out an extensive program of nuclear weapons testing in Australia. The tests were carried out in the Monte Bello group of islands off the Western Australian coast and at Emu Field and Maralinga in South Australia. Minor nuclear test trials were conducted at Maralinga between 1953 and 1963. There was a major clean-up operation conducted in 1967 (April to July), called Operation Brumby, followed by other clean-ups.

Claims for workers' compensation in respect of conditions attributed to exposure to radiation from British nuclear tests in Australia may arise from:

- persons involved in the tests, or
- dependants of a deceased employee involved in the tests.

Comcare is responsible for investigating and determining claims from employees of Commonwealth agencies. Claims from military personnel would be managed by Department of Veterans Affairs, and claims from Australia Post (formerly known as Post Master General), and Telstra (formerly known as Telecom) should be referred to those relevant agencies.

Any claims from non-Commonwealth employees (i.e. construction workers, pastoralists, indigenous Australians) should be referred to Scheme Policy and Design. Scheme Policy and Design will ensure the claim is forwarded to the Department of Jobs and Small Business. The Department has oversight of The Administrative Scheme - a scheme set up to compensate persons affected by the nuclear testing. The Department may request Comcare investigate the claim further and will reimburse any expenses incurred by Comcare.

If a claim is received in relation to a condition sustained from exposure to radiation following the British Nuclear Tests in Australia, the following steps should be undertaken:

1. On receipt of a claim, a Claims Manager should notify Scheme Policy and Design of the claim and provide them with relevant claim details, including:
 - place – where the employee worked
 - dates – when they worked at that location(s)

- activities – what their employment involved
- exposure – employee’s statement on when they were exposed.

Note: A claim from a non-Commonwealth employee should not be entered into Pracsys but forwarded straight to Scheme Policy and Design.

2. The Claims Manager should investigate the claim further, including evidence confirming the employee’s employment at the relevant time with the relevant employer and refer any information to Scheme Policy and Design.

Note: Scheme Policy and Design will approach the Department of Industry, Innovation and Science for confirmation of the employee’s involvement in the nuclear test program and any details of exposure to radiation. If exposure is confirmed, Scheme Policy and Design will contact the Australian Radiation Protection and Nuclear Safety Authority (ARPANSA) for estimates of the employee’s exposure levels.

3. Scheme Policy and Design will contact Claims Management. The Claims Manager should obtain medical evidence regarding the relationship between the level of exposure (as provided by Scheme Policy and Design) and the claimed condition(s).

Note: In addition to medical information from the employee’s treating practitioner, an oncologist report should be obtained. The Peter McCallum Institute in Melbourne specialises in these types of matters.

4. Following review of all relevant evidence, the Claims Manager will determine liability in respect of the claim. The Claims Manager must inform Scheme Policy and Design of the determination.

Note: Claims involving radiation exposure should first be considered under section 7(1) of the SRC Act before other relevant provisions are considered.

5. Claims Management must notify Scheme Policy and Design of any appeal requests and their outcome.

The [Report of the Royal Commission into British Nuclear Tests in Australia](#) provides relevant information that may be of use when determining radiation-related claims. Additional information on [Maralinga and British nuclear testing in Australia](#) is available on the Department of Industry, Innovation and Science's website.

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