

# Overview of the AAT and Instructing Officer role

## Appeals

∨ Administrative Appeals Tribunal

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## Introduction

The *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) has a three tiered decision making process.

The third tier of that process is where the Administrative Appeals Tribunal (AAT) conducts an independent review of decisions made. Either the employee or the employer can apply to the AAT.

Note: The AAT can only review [reviewable decisions](#).

## What is the role of the Administrative Appeals Tribunal (AAT)?

The role of the AAT is to provide an independent merit review of administrative decisions and aims to provide a review mechanism that is fair, just, economical, informal and quick. The AAT stands in the shoes of the original decision maker to assess whether Comcare has made the correct or preferable decision.

The AAT makes its decision after it has heard and considered a case. The AAT has the power to:

- affirm a decision which means the decision made by Comcare is not changed
- vary a decision which means the decision has been changed or altered in some way
- set aside a decision and substitute a new decision which means it agrees or partially agrees that the decision was wrong and has changed all or part of the decision, or
- remit a decision to Comcare for reconsideration.

For further guidance refer to the Scheme Guidance [Extent of power of the administrative appeals tribunal when reviewing reviewable decisions](#) page.

## What is the role of the Instructing Officer

The Instructing Officer (IO) is an authorised person in the Claims Management Group, Legal Group or in an agency participating in the Delegated Claims Management Arrangements.

The IO role includes:

- providing instructions on behalf of Comcare to Legal Service Providers (LSPs) in relation to key decision points and the management of an AAT matter
- authorising payments of invoices for services, monitoring performance and reporting on any issues to the Legal Practice Manager
- records management (including ensuring all records in relation to a matter are appropriately filed and maintained in Comcare's claims management and records management systems)
- handing over an AAT outcome to the Claims Operational teams for implementation.

For further guidance on the roles and responsibilities of the Instructing Officer refer to the [Instructing Officer Protocol in Administrative Appeals Tribunal Litigation](#) document.

## What is a Calderbank offer?

When Comcare makes an offer of settlement to an Applicant during the AAT process, they may make what is known as a Calderbank offer.

The purpose of this is to encourage settlement and reduce both costs and time involved in the dispute process.

A Calderbank offer is made on a 'without prejudice save as to costs' basis and must set out the terms of the offer and set out the risks as to costs if they do not accept the offer.

It lets an Applicant know that if the offer is not accepted and the matter continues to hearing and the Applicant does not achieve an outcome that is more favourable than the terms of Comcare's offer, Comcare will:

- oppose the Applicant being awarded costs on and from the date of Comcare's Calderbank offer
- apply to the AAT to have any costs the Applicant would otherwise be awarded up to the date of the Calderbank offer reduced by the amount of costs Comcare incurs from the date of the Calderbank offer.

Comcare's Legal Group or the engaged external legal provider recommend and draft the Calderbank offer.

## What does 'implied undertaking' mean?

The implied undertaking is a legal principle which prevents parties from using certain documents obtained in the course of AAT proceedings for different purposes. Parties must seek the AAT's permission to use those documents, and this requires a formal AAT order 'releasing' a party from the implied undertaking.

Generally, any documents which Comcare obtains under compulsion are potentially subject to the undertaking. Such documents include the following categories:

- documents produced to Comcare following a summons issued by the AAT. For example, the AAT often issues summonses to doctors to provide their clinical notes
- documents provided to Comcare by a party following an AAT direction to do so. For example, where the AAT directs an applicant to provide a medical report to Comcare
- reports obtained by Comcare which consider documents to which the implied undertaking applies. For example, where Comcare asks an independent doctor to write a medico-legal report, and where Comcare includes summonsed records in the briefing material.

Comcare is only prohibited from using subject documents for purposes that are collateral (different) to the proceedings in which they are obtained.

Claims management purposes are not collateral where the proposed use of the subject documents relates to managing claims for the same employee, and the same injuries that were relevant to the AAT proceedings.

Comcare should seek the AAT's release before using subject documents in relation to a different injury, or where decisions are made under a different Part of the SRC Act to the decision under review in the AAT.

For guidance on using AAT documents, please speak to your Assistant Director in the first instance.

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## **Are there appeal options following an Administrative Appeals Tribunal outcome?**

Where an error of law is identified (including inadequate reasons for an AAT decision), the employee, the employer or Comcare can dispute an AAT decision in a Court (namely the Federal Court up to the High Court).

### **Appeal to the Federal Court**

If the Tribunal affirms, varies or sets aside Comcare's decision, either party may appeal to the Federal Court on the basis that there was an error of law. The matter is heard by a single judge in the first instance however both parties are entitled to

appeal to the full Federal Court. The Federal Court either dismisses the appeal or sets the decision aside.

## Appeal to the High Court

If either party is still not satisfied with an outcome from the full Federal Court, they may seek leave to appeal to the High Court. The High Court may grant leave for the matter to be heard. It considers whether there is a special reason why the matter should be heard before making judgments.

All instructions in relation to matters appealed to the Federal Court or a higher Court, are provided by Comcare's Legal Group under the instruction of the General Manager of Claims Management.

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## Model Litigant obligations

The Commonwealth's obligation to act as a 'model litigant' has its origins in the common law, and has been described as an old-fashioned traditional, and almost instinctive, standard of fair play.

As a Commonwealth agency, Comcare is bound by the Commonwealth's obligation to act as a model litigant.

Being a model litigant requires Comcare to act with complete propriety, fairly and in accordance with the highest professional standards in relation to the conduct of legal proceedings and alternative dispute resolution processes to assist the Tribunal make the correct or preferable decision. This includes:

- dealing with matters promptly and without unnecessary delay
- acting consistently in the handling of matters
- not requiring the other party to prove a matter which Comcare knows to be true
- considering and participating in alternative dispute resolution processes where appropriate.

This binding obligation of the Commonwealth and its agencies extends to external legal service providers engaged by Comcare to act on its behalf.

Being a model litigant however does not prevent Comcare from acting firmly and properly to protect its interests, including taking all legitimate steps to test or defend decisions made by Comcare.

Refer to [The Commonwealth's Obligation to Act as a Model Litigant](#) for more information.

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Go to '*Manage Claim Comment*' (MCOM), enter a comment stating the specific service you have declined, the reason, and ensure that you record your conversations with the employee and employer.

## **Step 6: Update the treatment plan in Pracsys**

Go to '*Amend Payment Authorisation (Treatment Plan)*' (ACTP) and ensure the treatment plan is amended so that no future invoices will be automatically approved and paid.

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