

Request for claim file

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Introduction

Comcare may receive a request to provide an employee, their authorised representative or an employer with documents related to an employee's compensation claim.

Section 59 of the SRC Act provides the legislative basis to supply certain documents on request. Comcare is obliged to release the information it holds in relation to an employee's claim under section 59 of the SRC Act.

An employee can also request access to their claim file under the *Freedom of Information Act 1982* (FOI Act), refer to the [Freedom of Information requests page](#) for more information.

There are other parties, such as the Ombudsman's Office, that can also request access to claim files.

Section 59 and FOI Act requests, and requests by other stakeholders such as the Ombudsman, are managed by Comcare's Statutory Oversight team. All requests under section 59 should be forwarded to the [S59 team](#).

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What makes a compliant section 59 request?

Section 59 of the SRC Act does not expressly require a request to be made in writing. However, it is preferred that requests for documents under section 59 should be made in writing. This ensures that there is no dispute:

- over the terms of the request, and
- that the person requesting the documents is:
- the employee to whom the documents relate, or
- the employee's authorised representative.

Also, to prevent any breaches of the *Privacy Act 1988*, Comcare requires identification in the form of:

- the employee's claim number and/or signature, and
- some other form of identification which positively identifies the person as being who they claim to be.

Note: If an employee or employer is seeking information on how they can access documents held on their claim file, you can refer them to the following page on Comcare's website [How Do I Request a Copy of My Claim File?](#)

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What Comcare does not have to provide under section 59?

Comcare's view is that requests from employees for documents which are:

- not on the employee's file
- not related to the employee's claim, or
- publicly available through other sources and can be easily purchased or otherwise obtained do not have to be provided under a section 59 request.

Documents protected from release

There are certain documents that could be protected from release under section 59. These include:

- documents not related to the claim (especially any documents with personal information attached to the wrong claim file)
- information protected by Legal Professional Privilege
- information on Comcare's fraud investigations files, and/or
- medical reports containing information which, in Comcare's opinion, if released, could cause the employee or a third-party harm.

In circumstances where requests are received for documents which may fall into any of the above categories, you should discuss this with your Assistant Director.

Legal Professional Privilege

[Legal Professional Privilege \(LPP\)](#) may be broadly described as confidential communications passing between a client and legal adviser, that may not be given in evidence or otherwise disclosed without the client's consent.

Comcare can claim LPP in situations involving confidential communications between Comcare officers and its solicitors in relation to any court (i.e., the Federal Court, Magistrates Court, District or Supreme Court) or tribunal (i.e., the Administrative Appeals Tribunal (AAT)) matters, as long as those communications were:

- made for the dominant purpose of giving or receiving legal advice or of conducting actual or anticipated litigation
- there is a professional relationship of lawyer and client, so as to render the advice independent, notwithstanding any employment relationship, and
- the person who provided the advice is qualified to practice law and is subject to the duty to observe professional standards and the liability to professional discipline.

Legal Professional Privilege (LPP) may be waived either expressly or impliedly, where there has been an inconsistency between the conduct of the party seeking to rely on the privilege, and the confidential nature of the communication. This may include disclosing the content or substance of legal advice to a third party, for example quoting or closely paraphrasing legal advice received from a panel firm in correspondence to another agency. Loss of LPP may result in Comcare having to produce documents in proceedings, or release documents pursuant to an FOI request or other compulsory disclosure mechanism.

Medical reports

The underlying principle governing the release, or protection from release, of medical reports or other such material (particularly psychiatric or psychological reports) is that they should not be released where there is a real risk that the report could lead to the employee harming (physically or mentally) themselves or another person.

The person best placed to determine the risk involved would be the employee's treating practitioner or specialist. It would, therefore, be considered appropriate to consult with the doctor/specialist before releasing any potentially sensitive information to the employee.

Release of information to employers

Employers have the right to request and be provided with information relating to an employee's claim. This only extends to documents relating to a claim affecting that agency. In general, this will not extend to documents relating to claims lodged by the same person in relation to employment with another employer, although there may be occasions where the new employer is affected by the other claim(s) and as such has a legitimate reason to request that information (for example where the new employer is required to take action as the rehabilitation authority).

Where an employee has advised Comcare that they do not want documents to be provided to a particular person in their agency, you will need to advise the employee that the employer nominates on the claim form a contact person in the agency (usually a Rehabilitation Case Manager) that Comcare is required to communicate with and send information relating to an employee's claim to. Comcare has no control over who the nominated person on the claim form shares the information relating to an employee's claim with within the agency. The sharing of claim related information within the agency is subject to their own privacy obligations.

If an employee has concerns or questions in relation to how their employer handles information relating to their claim, they should contact the Privacy team within their employing agency about their collection, use or disclosure of their personal information.

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Release of single documents to employee outside of section 59

An employee may request, outside of a formal request under section 59, for one or a few documents.

You can provide these to the employee outside of section 59, in discussion with your Assistant Director, as long as they are reviewed to ensure there are no privacy breaches and risk in terms of potential harm to the employee is assessed.

If an employee requests many documents or their whole claim file, without reference to section 59, you should consider this a request under section 59, advise the employee of this, and refer the request to the [Statutory Oversight](#) team.

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