

# Requesting information from employers

## Gathering claim information

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We require information from employers to manage claims and make decisions.

Only factual and specific information, or documents that an employer has in their possession, custody or control which are relevant to a management of a claim, can be requested. We should not make general or broad requests for information from an employer. If we receive information that is not relevant to the claim, it must be redacted or removed entirely.

Examples of the types of information or documents that may be requested from an employer include, but are not limited to:

- information related to the employee's recovery, medical treatment and capacity for work
- leave records if required
- supervisor and/or witness statements if required
- normal weekly earnings (NWE) calculations
- cessation of employment details
- the employer's policies and procedures
- employment agreements
- rehabilitation reports
- current medical certificates, if not obtained from employee.

We can request information informally, (i.e., without requesting it under section 71 of the SRC Act) or formally (i.e., using section 71 of the SRC Act).

### **Payment of costs**

There is no provision in the SRC Act authorising the payment of any costs borne by the employer in responding to a section 71 request for information by Comcare. This includes indirect or associated costs such as the fees required by the National Archives of Australia (NAA) to conduct a records search. This means Comcare will not cover employer claims for expenses associated with Comcare requests for information.

## What information Comcare can receive, send and store

Comcare technology systems are only able to receive, store and send information rated no higher than 'OFFICIAL: Sensitive'.

As outlined in our section 71 template, all employers are encouraged not to send Comcare any information containing 'PROTECTED' or 'SECRET' classifications. Where this is received, you are requested to contact the employer and check whether the classification can be downgraded by the relevant work area.

Where Information carrying a 'PROTECTED' or 'SECRET' classification is required to be sent to Comcare as part of the management of a claim, this can be sent by safe hands courier to Comcare's Canberra office addressed to the appropriate Comcare employee.

## When to request information informally versus formally?

Whether we request information informally versus formally depends on the circumstances of the claim. Our normal approach is to request the information informally in the first instance following a conversation with the rehabilitation case manager, however, there will be instances following that conversation where a formal section 71 request is required in order to gather the information.

A section 71 request is normally issued for gathering information to assess liability (initial, secondary etc), and so our section 71 template letter reflects this. In most other situations, we seek information informally.

If you are unsure, please discuss with your Assistant Director and Injury Manager, and bring to a triage meeting where relevant. For further guidance refer to the [Triage](#) page.

## Stop Clock Provisions

There are prescribed timeframes for determining claims under the *Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023*. The prescribed timeframes start the day that Comcare receives a claim for compensation that meets the requirements set out under section 54 and is being determined under section 14 of the SRC Act.

However, the prescribed timeframes do not apply to certain periods in which Comcare requests information or a copy of a document from the employer under section 71 of the SRC Act

The stop clock request applies on the date that Comcare provides the written section 71 request to the employer (i.e. the date that Comcare emails or sends the section 71 request to the employer).

Once the details of the stop clock request are created in the '*Manage Initial Liability Assessment*' (MILA) or '*Manage Initial Liability Task*' (MILT) dashboards, the calendar day countdown will stop.

Please refer to: Pracsys user guide - [How to update MILA or MILT](#)

The date that Comcare receives the required information from the employer must be used to finalise the stop clock request.

Once the stop the clock request has been finalised in the MILA or MILT dashboards, the calendar countdown will recommence the next day (unless there are other stop clock requests on the claim).

**Please note:** The prescribed timeframes **do not apply to** instances where Comcare **informally** requests information from the employer regardless of whether the claim is undetermined or is a determined claim.

The prescribed timeframes also **do not apply** to instances where Comcare **formally** requests information from the employer under section 71 where:

- Comcare has already made a section 14 determination on the claim
- a new secondary condition is being determined against an existing claim
- there is a continuation of an employee's compensable condition against an existing claim

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## Procedure for requesting information informally

To request information informally from an employer, please follow the steps below:

### Step 1: Phone the employer

Your conversation should include the following:

- advise of the specific information/documents required
- advise of the reason(s) you are requesting the information/documents be provided
- advise of the due date (up to 14 calendar days) for the information/documents to be provided and how to provide them
- emphasise the importance of quick decision and responses for claim outcomes.

The employer may indicate that they do not have those documents or, they will not provide them or request that you issue a section 71 notice to enable them to release certain information/documents. If so, discuss with your Assistant Director and, where appropriate, proceed to section 71 request for information. For more guidance on this procedure refer to the section [Procedure for requesting information formally](#) below.

## Step 2: Send an email to the employer.

Your email should include details of the discussion, the information/documents required and the due date.

**Note:** Remember to use Pracsys email.

## Step 3: Phone the employee

Advise the employee of your conversation with the employer. Ensure that you send the employee a copy of your email sent to the employer

## Step 4: Update Pracsys

Go to '*Manage Claim Comment*' (MCOM), enter a comment specifying the information/documents requested and record your conversations

## Step 5: Create an action plan

Go to '*Manage Action Plan*' (MAP), create an action plan diary detailing the information/documents requested and enter the due date for the reminder.

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## Procedure for requesting information formally

To request information informally under section 71, please follow the steps below:

## Step 1: Preparation work

You should work with your Assistant Director to determine the need for a request under section 71. For initial liability determinations, this may include the need for an [Employer statement](#).

You also need to consider the amount of time you are going to provide the employer to provide the information including the impact on the prescribed timeframes (if applicable). Normally up to 14 calendar days is provided. You will need to consider the complexity of the request and the availability of the information or documents.

## Step 2: Phone the employer

Your conversation should advise the Rehabilitation Case Manager:

- of the specific information/documents required
- of the reason you are requesting the information/documents be provided
- that you will be requesting the information/documents be provided under section 71
- of the due date (14 calendar days) for the information/documents to be provided including any impacts that the prescribed timeframes may have on determining the claim, and
- if the information/documents are not received by the due date, you may proceed with a determination based on the evidence available at that time.

## Step 3: Send letter to the employer

Using the section 71 template letter in Pracsys, draft your letter to the employer covering the following points:

- the specific information/documents you require
- 14-calendar day timeframe for the employer to respond.

## Step 4: Enter the stop clock details in MILA or MILT (for claims where the prescribed timeframes apply):

Go to the '*Manage Initial Liability Assessment*' (MILA) or '*Manage Initial Liability Task*' (MILT) dashboard:

- record the stop clock date i.e. the date you sent the letter to the employer
- record the details of your conversations and

- the details of the information you are requesting from the employer including the due date

Please refer to: Pracsys guide on how to update MILA.

## **Step 5: Contact the employee**

Advise the employee of your conversation with the employer.

**Where the prescribed timeframes apply to initial claims**, advise the employee about the stop clock provisions and how the section 71 request to the employer may impact the timeframes for determining their claim.

Ensure that you send the employee a copy of your letter sent to the employer.

## **Step 6: Update Pracsys**

Go to '*Manage Claim Comment*' (MCOM), enter a comment specifying the information/documents requested and record your conversations with the employer and/or with the employee (if you did not do so in MILA/MILT)

## **Step 7. Create an action plan**

Go to '*Manage Action Plan*' (MAP), create an action plan diary stating that you have issued a section 71 notice to the employer to provide the requested information/documents and enter the due date for the reminder.

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# **What do I do if an employer doesn't respond to the section 71 request?**



While section 71 provides Comcare with the power to request information or documents, it does not provide for any powers to compel an employer to respond to that request.

If you make a request of an employer under section 71 and that employer does not respond within the timeframe set or the received information/documents are not what you originally requested, you should follow up directly with the employer.

You can, however, consider proceeding with the action on the claim at hand (such as an initial determination) without the information requested from the employer. You should discuss with this your Assistant Director in the first instance –and the claim should be taken back to triage for discussion. For further guidance refer to the [Triage](#) page.

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## Procedure for following up a section 71 request

If you need to follow up a section 71 request use the below steps:

### **Step 1: Phone the employer and advise that the information/documents requested have not been received.**

If the employer advises that they have recently sent the information/documents, proceed to the 'Procedure for actioning an employer response to a request for information' below once you have received the information/documents.

If the employer requests an extension of time, refer to the information on this page about extension of time for a section 71 request follow the steps outlined in the [Extension of time for a section 71 request](#) section below.

If the employer informs that they are not providing the information/documents, complete steps 2 to 4 below (where applicable), discuss with the Assistant Director, and list the claim for triage discussion – for further guidance refer to the [Triage](#) page.

## **Step 2: Update the stop clock details in MILA or MILT (for claims where the prescribed timeframes apply):**

If the employer has advised that they have sent the information or documents to Comcare, you will need to finalise the stop clock details once the information or documents have been received.

If the employer has requested an extension of time, you will need to update MILA/MILT with the new due date and the details of any conversations you have had with the employer and/or the employee.

If the employer has informed you that they are not providing the information or documents, you will need to finalise the stop clock request in MILA/MILT.

## **Step 3: Update Pracsys (for all other claims)**

Go to '*Manage Claim Comment*' (MCOM), enter a comment that you have followed up the information/documents requested.

Record your conversations and any actions that have been agreed upon.

## **Step 4. Update the action plan**

Go to '*Manage Action Plan*' (MAP), amend the initial diary created with a new date for the reminder, or close your previous action plan with the date you have been notified by the employer of non-compliance with a Section 71 notice.

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## Extension of time for a section 71 request

Following a request made under section 71, an employer may ask for an extension of time to provide the requested information or documents.

Generally, extensions are given on request provided:

1. the employer has demonstrated that they are taking action to provide the requested information, and
2. you are satisfied that the reason for the delay is reasonable.

An employer may request more than one extension of time and each request should be considered on a case-by-case basis.

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## Procedure for actioning a request for an extension of time to respond to a section 71 request

To action a request for an extension of time to respond to a section 71 request follow the steps below:

**Step 1: Determine whether the reasons provided by the employer are reasonable**

You should consider the context and weigh up the importance and relevance of the information against the decision you need to make on the claim. You should discuss this with your Assistant Director. Extensions of time are requested when the employer faces difficulty in gathering information due to availability of staff, archive searches or when the claimed injury date is a few years earlier.

## Step 2: Phone the employer:

If you are agreeing to an extension of time, advise the employer that:

- the extension of time has been granted
- the new due date, and the information/documents to be provided.

If you are not agreeing to an extension of time, advise the employer that:

- you consider their request for an extension is not reasonable and provide your reasons, and
- advise them what will happen from here in terms of the decision or action you are taking on the claim (e.g., the initial liability determination will be made, based on the information available).

## Step 3: Send an email to the employer

Your email should confirm your conversation with the employer. Remember to send a copy of your email to [Claims Correspondence](#) and include the claim number in the subject line.

## Step 4: Phone the employee

Advise the employee of your conversation with the employer.

**Where the prescribed timeframes apply to initial claims**, advise the employee about the stop clock provisions and how the section 71 extension of time request may impact on the timeframes for determining their claim.

Follow up with a letter to the employee confirming the discussion and provide the details of the prescribed timeframes for determining their claim.

Ensure that you send the employee a copy of your email sent to the employer.

## Step 5: Update Pracsys

Where the prescribed timeframes apply to initial claims, if the employer has requested an extension of time, you will need to update the due date in MILA/MILT.

Go to '*Manage Claim Comment*' (MCOM), enter a comment stating if you have or have not granted an extension of time, include your reasons and record your conversations with the employer and employee.

## Step 6: Update the action plan

Go to '*Manage Action Plan*' (MAP), action the initial diary created for the section 71 notice, create a new action plan diary, and enter the due date for the reminder.

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## Procedure for actioning an employer response to a request for information

When you have requested an employer to provide information or documents to assist in the management of a compensation claim, you will be required to action the information received from the employer. Please follow the below steps:

## Step 1: Review the material provided.

Review the information/documents provided by the employer against the following:

- Work health and safety: if there is a risk of the information/documents containing material that may cause harm/distress, discuss this with your AD before reviewing. If on review there is distressing content, discuss immediately with your AD. The AD will support you to manage the information provided, including ensuring limiting further access and storing the information appropriately. For further resources and supports, see [A Safe and Healthy Workplace](#).
- Privacy: if there is information that is provided that is not related to the employee or the claimed condition, the information must be managed in line with the information set out on the [Privacy](#) page and [Removing and redacting information](#) from a claim file . You should raise any concerns with the Assistant Director immediately
- Security: if the information provided has a security rating of higher than 'OFFICIAL: Sensitive', raise this immediately with your AD
- Completeness: ensure the employer has provided all of the information requested – if not, contact the employer for the missing information/documents before proceeding.

## Step 2: Update MILA/MILT in Pracsys (For claims where the prescribed timeframes apply)

Go to the 'Manage Initial Liability Assessment' (MILA) function in Pracsys to finalise the stop clock request.

## Step 3 : Phone the employee

Your conversation should:

- advise that you are in receipt of the information/documents requested from the employer
- (where appropriate) advise that you will be providing the employee with the opportunity to respond to the information provided by the employer, and of the due date
- that after the due date a determination will be made based on the information on the file
- If the prescribed timeframes apply and there are other stop clock requests on the claim, you may need to discuss the impacts that these may have on the determination timeframes for the claim.

If the information provided is going to result in an adverse decision, you will need to send a copy of the employer's information provided to the employee for a response. This is important in ensuring that natural justice is being offered to

the employee.

## Step 4: Send letter to the employee

Send a letter to the employee using the standard letter to employee in Pracsys, or send an email, including the following:

- the information/documentation being provided and why
- the due date, and
- that after the due date a determination will be made based on the evidence on file.

## Step 5: Phone the employer

Advise the employer of the following:

- that you have received the information/documentation
- where relevant, that you have removed/redacted certain information provided/or other action being taken, and
- that you have contacted the employee, and that you will be providing a copy of all or some of the information/documents provided by the employer of your conversation with the employee.

Ensure that you send the employer a copy of your letter sent to the employee.

## Step 6: Update Pracsys

Go to *'Manage Claim Comment'* (MCOM), enter a comment stating that the employee has been provided with the opportunity to respond to the information provided by the employer and record your conversations.

## Step 7: Update the action plan

Go to *'Manage Action Plan'* (MAP), action the initial diary created for the section 71 notice, create an action plan diary and enter the due date for the reminder.

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## Closed circuit television

There may be cases when an employer wishes to provide closed circuit television (CCTV) footage. If this is raised, it is worth discussing with your Assistant Director.

In your conversations with the employer, you must advise the employer that for CCTV footage to be considered as part of the decision-making process it must satisfy the following requirements:

- be of a good quality
- be dated and time stamped
- clearly identify who the employee is
- be limited to the employee's workplace
- clearly demonstrate the specific claimed incident or what the employee was doing at the time of the incident
- be in a format viewable on a personal computer.

We also require a copy of the employer's policy and guidelines that provides information concerning the purpose, recording, storage, copying and distribution of CCTV footage that is captured on their premises. This is to ensure that the CCTV footage was obtained in accordance with the employer's policy and guidelines.

If a CD of CCTV is received, you will need to ensure, following consideration of its relevance and any *Privacy Act 1988* implications, a copy is scanned to the claim file.

You will also need to consider whether it is required to be provided to the employee.

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