



BEST-PRACTICE DECISION MAKING UNDER THE SRC ACT

PURPOSE

To provide determining authorities with general information on best-practice principles and guidance on applying these principles when making and communicating decisions under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

BACKGROUND

The SRC Act establishes a workers' compensation scheme (the Comcare scheme) to provide compensation and rehabilitation support to injured employees of the Commonwealth, Commonwealth authorities and licensed corporations (licensees).

The SRC Act provides determining authorities¹ with decision-making powers and provides employees with review rights for these determinations. Central to good decision making is an understanding of the operation of the SRC Act and the core principles that guide best-practice decision making.

GUIDANCE

Administrative law

Administrative law is the body of law regulating how decisions are made under Commonwealth legislation. It is an accountability mechanism that applies to decisions about individual matters, rather than broad policy decisions. It is based on the fundamental values of fairness, lawfulness, rationality, openness, and efficiency.²

The Administrative Review Council's³ [Best Practice Guides and associated material](#) provide guidelines about the administrative law principles, summarised and discussed below.

Decision-making power

A decision must be made under legal authority by an authorised person. The most common source of power for decision making is legislation. If the legislation assigns a power to a designated person, the power can only be exercised by that person, unless the statute expressly authorises further delegation of the power.

Delegations are usually made to a person performing duties in a specified position or classification level within a particular branch, section, or team (or other clearly identified administrative division) through an instrument of delegation. When a power has been delegated, both the designated person and the delegate are authorised to exercise that power.

If a decision is made without a source of power (including delegated or implied⁴ power) the decision is likely to be invalid.

1 Determining authority, in relation to a determination, means the person who made the determination [section 60(1) of the SRC Act]. For the purposes of this guidance, the determining authority will be referred to as the 'decision maker.'

2 [Australian Administrative Law Policy Guide | Attorney-General's Department \(ag.gov.au\)](#).

3 In 2015 the Administrative Review Tribunal (ART) was discontinued, and its functions consolidated into the Attorney General's Department. The ART has been re-established by the [Administrative Review Tribunal Bill 2024 – Parliament of Australia \(aph.gov.au\)](#) and will commence as soon as practicable before the end of 2024. Note: Best Practice Guides and associated material are still considered good policy but have not been updated to reflect any current changes to case law or relevant legislation.

4 An implied power to authorise arises where, even though there may or may not be an express power to delegate in the legislation, there can be an implied power for an official to exercise the power on a person's behalf.

SRC Act

The SRC Act provides the legal authority for decision making in the context of workers' compensation claims and return to work. This includes authorising:

- > Comcare⁵ to delegate any, or all, of its functions and powers under the SRC Act to persons employed by the Commonwealth or a Commonwealth authority, which includes making decisions regarding a workers' compensation claim under the SRC Act
- > a licensee or a person acting on the licensee's behalf to manage some or all the claims made by employees of the licensee⁶
- > a licensed authority⁷ to delegate any, or all, of its functions and powers under the SRC Act to persons employed by that authority, the Commonwealth, or a Commonwealth authority.

SRC Act instruments of delegation should be regularly reviewed to ensure delegated roles (functions and powers) made under the SRC Act remain current and fit for purpose.

Natural justice

Natural justice (or procedural fairness) is a legal requirement that applies to most decisions that directly affect the rights, interests or legitimate expectations of individuals or organisations. Natural justice requires that decision makers adhere to a fair decision-making procedure. The 2 primary rules of natural justice are:

1. Hearing rule

The hearing rule provides that employees should be given notice of a proposed adverse decision. Typically in the context of applying the provisions of the SRC Act, the hearing rule is applied in circumstances where an employee is receiving compensation and the decision maker intends, based on the claim and information before them, to cease or suspend compensation entitlements under the SRC Act.

The notice given should outline the nature of the decision proposed, the reasons why, and the ramifications (for example, weekly incapacity compensation will cease). Sufficient detail regarding the reasons for the intended decision should be provided, so that the employee can appropriately respond. The notice should also provide a timeframe proportionate to the outcome of the intended decision for the employee to respond by.⁸

2. Bias rule

The bias rule concerns conflicts of interest and requires a decision maker to be impartial and free of actual or apparent bias. A conflict of interest exists where a decision maker has any kind of interest that has the potential to prevent them, or appear to prevent them, from performing their duties impartially. A conflict of interest can arise in several ways, including but not limited to:

- > a financial/business interest
- > political interests
- > social interests
- > cultural or religious factors
- > family/personal relationships.

The type of interest or the nature of the interest is not what matters, but rather the actual or apparent influence that the interest can have on the decision maker's ability to make impartial decisions.

5 Section 73B: Delegation by Comcare.

6 Section 108B: Licence can authorise licensee to manage claims.

7 Section 108H: Delegation by a licensed authority.

8 Where an employee has granted authority for another person to act on their behalf (for example, a family member or a union delegate), the notice should be provided to the person acting on the employee's behalf.

Decision makers should declare any actual or apparent conflict of interest and take appropriate steps to manage the conflict (for example, by reallocating the claim to another decision maker who does not have a conflict).

Determining authorities should have procedures and processes in place to educate, encourage and provide for SRC Act decision makers to declare a real or potential conflict of interest.

Rationality and reasons

Decisions must be made according to law and based on the relevant facts. The legislation will determine what facts are material to the decision that is to be made, and often sets out factual matters that must be considered by the decision maker.

All communication with an employee affected by an administrative decision, including reasons about findings on relevant facts, must be clear and expressed in terms that the reader understands.

SRC Act

The SRC Act contains legislative provisions that can aid a decision maker in requesting or obtaining relevant information to assist in establishing facts. For example, section 58 of the SRC Act allows decision makers to request additional information or documents from an employee, relevant to the claim that has been made by the employee and information that the employee can obtain without unreasonable expense or inconvenience.

When managing a claim under the SRC Act, it is important that a decision maker accounts for a decision. This can be done by maintaining full and accurate records that include findings of relevant fact, the evidence on which those findings are based, and the evaluation of those facts against the relevant provision(s) of the SRC Act.⁹

The SRC Act requires decisions that are subject to internal review (reconsideration) to be notified in writing to the employee with reasons and review rights.¹⁰ Decisions made on reconsideration (reviewable decisions) are similarly required to be notified in writing with reasons and review rights, namely to apply to the Administrative Appeals Tribunal (AAT) for review of the reviewable decision.¹¹

Accountability

Decision makers are accountable for their decisions through external scrutiny, review, and transparency measures that:

- > require them to provide reasons for decisions
- > empower bodies such as the Commonwealth Ombudsman and Safety Rehabilitation and Compensation Commission¹² to perform their respective functions
- > give people and organisations the right of access to records under freedom of information legislation
- > give people and organisations the right to apply to a tribunal or court for review of a decision that affects them.

⁹ Section 59 of the SRC Act provides that a relevant authority gives the employee any document held by the relevant authority that relates to the employee's claim.

¹⁰ Section 61: Determinations to be notified in writing; Section 38(1): Rehabilitation determinations (36 or 37) to be notified in writing.

¹¹ Section 63: Reviewable decision to be notified in writing.

¹² Employees with workers' compensation claims made against the Commonwealth can lodge a complaint with the Commonwealth Ombudsman. Employees of licensees who believe a licensee has breached its license can lodge a complaint with the Safety, Rehabilitation and Compensation Commission (SRCC), noting that the SRCC's functions do not extend to investigating complaints in relation to individual claims matters. More information is available on Comcare's website: [Feedback and complaints | Comcare](#).

SRC Act

The SRC Act provides access to review and appeal of determinations made by SRC Act decision makers. This includes merits review by way of internal review (reconsideration) or externally by proceeding to the AAT for a review of the reviewable decision.

Decisions made by the AAT in relation to a reviewable decision can be subject to judicial review by the Federal Court. If a party believes the AAT decision is wrong, they can appeal the decision to the Federal Court. An appeal to the Federal Court can only be about a question of law.

Federal Court (judicial review) can also be sought by an employee, under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act).¹³ The ADJR Act provides that the court will review a decision by considering whether the decision maker has properly made that decision according to law and a failure of a decision maker to adhere to the various administrative decision-making principles discussed above (for example, the natural justice principles) may be an error of law.

Attachment A provides SRC Act claims management decisions that can be subject to a merits review.

SRC Act and other legislative requirements

The SRC Act also confers specific functions and powers on Comcare and licensees in relation to decision making that aligns with the principles of administrative law. It provides that decisions should be made accurately and quickly.¹⁴ In relation to claims management,¹⁵ a decision maker:

- > shall be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities
- > is not required to conduct a hearing – a hearing is not required to make a decision, but a person affected by a decision should be given a fair opportunity to identify relevant information and evidence, as required by natural justice
- > is not bound by the rules of evidence – decision makers can take into account a variety of evidence in relation to proving (or not) a fact, even if that evidence would not be admissible in court.

A licensee, as part of their licensee arrangements, may also be subject to conditions of licence, additional to the above, in respect of decision making.

Decision makers should be aware of the legal requirements of other legislative frameworks that may impact their decision making. For example, the *Privacy Act 1988* protects and regulates how personal information is handled. A decision maker under the SRC Act must comply with the requirements of the Privacy Act and ensure all delegated persons making decisions understand their privacy obligations.

Making a determination under the SRC Act

Prior to making a determination

- > Identify the legislative provision that authorises or requires such a decision.
- > Identify the instrument of delegation relevant to the legislative provision to ensure any decision made is lawful (if the decision is to be made under delegated authority).

¹³ Judicial review to the Federal Court may be used when a person disagrees with a 'decision' made under the SRC Act. 'Determination' means a determination made under section 60 of the SRC Act and they are subject to merits review. An employee can also seek judicial review even where the SRC Act provides for a merits review of a decision.

¹⁴ Section 69(a): Comcare functions; Section 108E(a)&(b): Functions of licensees.

¹⁵ Section 72: Manner in which claims are to be determined.

When making a determination

- > Refer to the legislative provisions of the SRC Act that the decision relates to.
- > Have regard to any policies or procedures relevant to the decision. This could include reference to case law, scheme guidance or other policy material.
- > Consider if there is sufficient factual and medical information to appropriately make the decision, including whether there is other relevant factual or medical information reasonably obtainable that is not present. It is important to establish the facts, their relevance and significance to the decision.
- > Afford natural justice to relevant stakeholders before making the decision.
- > Ensure employees and employers are kept up to date on the progress of a decision.
- > Seek assistance from legal/policy if required.

Communicating a decision under the SRC Act

All determinations and reviewable decisions, identified in section 60(1), are required to be made in writing. A decision¹⁶ should be communicated to an employee as soon as practicable after the decision is made, setting out:

- > the terms of the decision
- > the reasons for the decision, and
- > a statement outlining how an employee can request a review of the decision.

Careful consideration should also be given to how a decision is communicated. Finding the appropriate tone and voice for the audience while communicating the facts in plain English is important.

Administrative Appeals Tribunal and higher court decisions

AAT decisions and court rulings (Federal Court, Full Federal Court and High Court) have an impact on decision making.

The AAT, in undertaking a merits review, exercises administrative rather than judicial power. However, a central purpose of merits review is improving decision making generally by correcting errors and modelling good administrative practices. Therefore, AAT decisions provide valuable guidance on the interpretation of legislative provisions, the evaluation of evidence, and the balancing of policy and other considerations when making claims management decisions.

The employee, Comcare, employer and/or the licensee can appeal an AAT decision to the Federal Court and must demonstrate that there is an error of law arising from the AAT decision. The judgment of a court sets a precedent, which means the court's interpretation of a particular SRC Act provision must apply to similar cases that are not distinguishable by facts.

RELATED COMCARE SCHEME GUIDANCE

Other relevant scheme guidance:

- > [Considerations in the reconsideration process](#).

MORE INFORMATION

For more information, please contact Comcare's Scheme Policy and Design team on 1300 366 979 or email SchemePolicyandDesign@comcare.gov.au.

ATTACHMENTS

Attachment A – SRC Act claims management decisions subject to merits review

¹⁶ Section 38, 61 and 63 of the SRC Act set out the requirement that determinations or reviewable decisions be made in writing, as soon as practicable after the decision is made.

ATTACHMENT A

SRC Act claims management decisions subject to merits review

Merits review process	Decisions subject to merits review
Internal review (<i>reconsideration</i>) [section 62]	determinations, decisions or requirements made under sections 8, 14, 15, 16, 17, 18, 19, 20, 21, 21A, 22, 24, 25, 27, 29, 29A, 30, 31, 34, 36, 37 39 or 57 ¹⁷ under paragraph 114B(5)(a) or under Division 3 of Part X [section 60]
Administrative Appeals Tribunal (AAT) [section 64]	decisions made under sections: <ul style="list-style-type: none">> 38(4) (in respect of other agency decisions under section 36 and 37)> 62 (in respect of determinations, decisions or requirements made under sections 8, 14, 15, 16, 17, 18, 19, 20, 21, 21A, 22, 24, 25, 27, 29, 29A, 30, 31, 34, 36, 37, 39 or 57, under paragraph 114B(5)(a) or under Division 3 of Part X [section 60])

¹⁷ Section 57 medical examinations that take place on and from the 14 June 2024 are determinations subject to internal review, and reconsiderations of those determinations may be then subject to AAT review.