

**SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS**

**QUESTIONS ON NOTICE
SUPPLEMENTARY ESTIMATES 2009-10**

Agency **Comcare**
DEEWR Question No. **EW605_10**

Senator Marshall asked on 21 October 2009, EEW R Hansard page 22

Question

POLICY FOR CHALLENGING APPLICATIONS FOR REVIEW BY THE AAT

Thank you for clarifying that for me. When Comcare has made its final decision and people ask for a reconsideration through the AAT, what is your policy with respect to that? Do you challenge every one of those decisions?

The CEO responded:—No, we do not challenge those. There would be a percentage. I can take the question on notice and give you the percentage of those decisions where the original decision is varied, altered or turned over.

Answer

Comcare has provided the following response:

Application for review of a reviewable decision made by Comcare can be made in the Administrative Appeals Tribunal (AAT) under section 64 of the *Safety Rehabilitation and Compensation Act 1988* (SRC Act) by a claimant, the Commonwealth, a Commonwealth authority, or a licensed corporation affected by the decision.

As a decision-maker and claims manager, Comcare is bound by provisions of the SRC Act and the *Legal Services Directions 2005*, including the Model Litigant Obligation. In the management of applications for review by the AAT, provisions of the *Administrative Appeals Tribunal Act 1975* (AAT Act) also bind Comcare.

Comcare has a statutory obligation under s69(1) of the SRC Act to make determinations accurately and quickly. Further, section 72 of the SRC Act provides that, when determining claims, Comcare shall be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities. Further Comcare is not required to conduct a hearing, and is not bound by the rules of evidence.

Section 33(1AA) of the AAT Act requires that in proceedings for review of a decision, Comcare must use its best endeavors to assist the Tribunal to make its decision in relation to the proceeding.

Comcare also complies with Settlement Guidelines issued by the Safety, Rehabilitation and Compensation Commission under s73A of the SRC Act. The guidelines were developed by the Commission in consultation with Comcare, licensed authorities and licensed corporations, unions representing claimants' interests and the AAT and have applied since 1 January 2002.

The Guidelines govern all actions by determining authorities in settling disputed claims which have been referred to the AAT for review. They relate to matters within the jurisdiction of the SRC Act that are settled with the consent of both parties and where the AAT proceeds to make a decision giving effect to the parties' agreement pursuant to section 42C of the AAT Act.

The Guidelines are as follows:

1. In settling disputed claims, determining authorities must act consistently with provisions of the *Safety Rehabilitation and Compensation Act 1988* and the *Administrative Appeals Tribunal Act 1975*.
2. In attending conciliation conferences, determining authorities should act in accordance with the AAT's Conciliation Conferences Direction. A copy of the direction can be found on the AAT's website at www.aat.gov.au.
3. Determining authorities must act honestly, fairly and consistently as between claimants in negotiating settlements.
4. Terms of settlements cannot reduce statutory entitlements below, nor increase them above, the amounts permitted or prescribed by the SRC Act.
5. Terms of settlements cannot include terms purporting to prevent employees from pursuing rights available under the SRC Act, nor can they seek to allow determining authorities to contract out of any existing or future liabilities under the SRC Act.
6. Where it is clear that an employee has an entitlement under the SRC Act, the determining authority should consider, without unreasonable delay, settling the disputed claim.
7. Where an employee is not legally represented, the determining authority must explain to the employee the terms of the settlement and the consequences of agreeing to the settlement. The determining authority must not proceed to settle the claim if it is apparent to it that the terms of the proposed settlement or the known consequences of it are not properly understood by the employee.
8. The terms of settlement filed under section 42C of the AAT Act should only cover matters arising from the disputed entitlement(s) before the AAT under the application(s) for review and cannot include any matter that is outside the scope of the SRC Act. Agreement by the parties to terms of settlement filed under section 42C of the AAT Act is distinct from the employee's acceptance of any separate settlement dealing with employment issues. Any such separate settlement should be reflected in separate documentation.
9. Terms of settlement filed under section 42C of the AAT Act should record all pertinent facts as agreed, should indicate the relevant provisions under which any entitlements to compensation payments arise in the given circumstances and should specify all relevant amounts, for example, amounts for loss of earnings (incapacity), redemptions, permanent impairments and medical and travel expenses, as well as legal costs.
10. Implementation of the terms of settlement, as given effect by a decision of the AAT pursuant to section 42C of the AAT Act, should be promptly actioned by the determining authority.

In response to Question EW606_10 below, we provide a detailed statistical analysis of claims received, including matters before the Administrative Appeals Tribunal.