



Australian Government

Comcare

Safety, Rehabilitation and Compensation Act 1988

Section 41

**GUIDELINES FOR REHABILITATION
AUTHORITIES 2012**

Pursuant to section 41 of the *Safety, Rehabilitation and Compensation Act 1988*, Comcare prepares and issues the following guidelines for rehabilitation authorities to each and every rehabilitation authority within the meaning of that Act.

DATED this 22nd day of May 2012

The Common Seal of Comcare
was affixed in the presence of:

Paul O'Connor
Chief Executive Officer

NOTE: Section 74(3) of the *Safety, Rehabilitation Act 1988* provides that all courts, judges and persons acting judicially are to take judicial notice of the imprint of Comcare's common seal and to presume it was duly affixed.

GUIDELINES FOR REHABILITATION AUTHORITIES 2012

***Safety, Rehabilitation
and Compensation Act
1988***

Section 41

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PRELIMINARY

1. Name

These are the *Guidelines for Rehabilitation Authorities 2012*.

2. Commencement

These guidelines commence on 1 July 2012.

3. Revocation

The *Guidelines for Rehabilitation Authorities 2005* issued from 1 September 2005 are revoked.

NOTE: The revoked guidelines were registered as F2005L02179 on the Federal Register of Legislative Instruments.

4. Authority

These guidelines are prepared and issued under section 41 of the *Safety, Rehabilitation and Compensation Act 1988* [the Act].

5. Dictionary, Appendices, Headings, Notes & Tables

5.1 The headings, notes and tables in these guidelines [including the Appendices and Dictionary] are part of these guidelines.

5.2 The Dictionary defines certain expressions used in these guidelines. Expressions not defined in the Dictionary bear their ordinary meaning unless another meaning is given by the Act or the *Acts Interpretation Act 1901*.

6. Application

These guidelines apply to and bind all rehabilitation authorities and their delegates. They should be read and applied in conjunction with the Act.

NOTES:

1. Part III of the Act confers functions and powers on employers and their principal officers. Section 41A of the Act allows the principal officer to delegate those functions and powers to other officers and employees of the employer. Those delegates are subject to all the laws that apply to the rehabilitation authority.
2. Section 41(2) of the Act requires compliance with these guidelines when performing and exercising the functions and powers under Part III of the Act.

CHAPTER 1 – INTRODUCTION TO THE GUIDELINES

7. Purpose

- 7.1 These guidelines have been prepared and issued by Comcare to assist rehabilitation authorities to implement effective rehabilitation for their employees.
- 7.2 Rehabilitation is provided to assist an injured employee with a work related injury who has an incapacity for work or impairment.
- 7.3 The aim of rehabilitation is to restore, as speedily and as far as is reasonably practicable, an injured employee to the same:
 - (a) physical and psychological state; and
 - (b) social and vocational statusas the injured employee had before suffering the injury.

8. Rehabilitation roles and responsibilities under the Act

Part III of the Act sets out the legislative framework for providing rehabilitation. It distinguishes the roles of Comcare and the rehabilitation authority. It also distinguishes the role of the rehabilitation authority from that of the employer. The legislative responsibilities of the various participants are described in **Table 1** below. There are additional responsibilities in support of the legislative responsibilities.

Table 1 – Legislative responsibilities

Participant	Responsibilities
Comcare	<ul style="list-style-type: none"> a) approves rehabilitation providers: <ul style="list-style-type: none"> i) determines criteria for approval and operational standards of rehabilitation providers; ii) approves, renews and revokes approval of rehabilitation providers; b) reviews rehabilitation determinations issued by premium paying Entities and Commonwealth authorities; and c) prepares and issues these guidelines in relation to the performance and exercise by rehabilitation authorities of their rehabilitation functions and powers
Rehabilitation authority or Delegate	<ul style="list-style-type: none"> a) arranges an assessment of an injured employee's capability to undertake a rehabilitation program; b) requires an injured employee to attend an examination to assess their capability of undertaking a rehabilitation program; c) decides whether an employee had a reasonable excuse for failing to attend or co-operate in an examination; d) determines, where the rehabilitation assessment indicates the employee to be capable, that the employee undertake a rehabilitation program; e) provides the determined rehabilitation program: <ul style="list-style-type: none"> i) using the services of an approved rehabilitation provider in circumstances where that is required by these guidelines; or ii) itself; and f) decides whether the employee had a reasonable excuse for failing to undertake a rehabilitation program
Employee	<ul style="list-style-type: none"> a) attends and co-operates at a required examination to assess the employee's capability of undertaking a rehabilitation program; and b) undertakes a determined rehabilitation program
Employer	<ul style="list-style-type: none"> a) takes all reasonably practicable steps to provide an injured employee with suitable employment or to assist the employee to find such employment; and b) performs rehabilitation functions delegated to its officers or employees by the rehabilitation authority
Determining authority	reviews rehabilitation determinations by the rehabilitation authority or delegate
Relevant authority	<ul style="list-style-type: none"> a) meets or reimburses the costs of any: <ul style="list-style-type: none"> (i) required examination to assess an injured employee's capability of undertaking a rehabilitation program; and (ii) rehabilitation program provided to an injured employee; and b) determines and pays any compensation payable in respect of the employee's injury

NOTE: Comcare's policy advice, guidance materials and recourses on the above responsibilities are available online at www.comcare.gov.au.

CHAPTER 2 – THE ROLE OF THE REHABILITATION AUTHORITY

9. The rehabilitation authority

For a person who suffers an injury as an employee of the Commonwealth, a Commonwealth authority or licensee, the rehabilitation authority is the principal officer of:

- (a) the Entity, Commonwealth authority or licensee currently employing the employee; or
- (b) if there is no such employer, the Entity, Commonwealth authority or licensee that most recently employed the employee.

NOTE: See Attachment C for detailed description of rehabilitation authorities.

10. Delegation of the rehabilitation authority's functions and powers

10.1 For the Commonwealth, Commonwealth Authority or licensee section 41A of the Act allows the rehabilitation authority to delegate in writing all or any of its functions and powers under Part III to an officer or person employed by the rehabilitation authority's employer.

10.2 A contracted claims manager or reviewer named in the licence granted to a licensee does not have authority to make or reconsider any rehabilitation determination. Those powers can only be exercised by the principal officer of the licensee or an officer or employee of the licensee that the principal officer has delegated that power to.

10.3 For defence related claims, section 152 of the Act allows the Military Rehabilitation and Compensation Commission and the Service Chiefs to delegate all or any of their functions and powers under Part III of the Act respectively to:

- (a) any person to whom they may make a delegation under section 384 of the *Military Rehabilitation and Compensation Act 2004*; and
- (b) any person to whom they may make a delegation under section 438 of the *Military Rehabilitation and Compensation Act 2004*.

10.4 All rehabilitation authorities shall review all rehabilitation delegations on a regular basis to ensure the full functions of the delegations are exercised effectively and the delegations are applied to the most appropriate office, person or position for the performance of those functions and powers.

NOTE: The principal officer, who is the rehabilitation authority, does not require any delegation because the functions and powers are conferred directly on the rehabilitation authority by the Act.

11. Delegations for the Reconsideration function

11.1 Following a written request under section 38 or section 62 of the Act, a review by way of reconsideration of a rehabilitation determination shall be undertaken by a delegated person other than the original decision maker. That person is called the reviewer.

11.2 The reviewer is:

- (a) Comcare: for premium paying Entities and Commonwealth authorities or their delegates, under section 38 of the Act;
- (b) a delegated officer or person employed within the licensee or Comcare: in respect of one of its own employees, under section 62 of the Act; and

- (c) the Military Rehabilitation and Compensation Commission: in respect of a serving or former service member, under sections 38 or 62 of the Act.

12. Compliance with the guidelines

The rehabilitation authority shall:

- (a) ensure that its delegates [referred to hereafter as case managers] comply with these guidelines;
- (b) take prompt and appropriate action to remedy any non-compliance with Part III of the Act or these guidelines; and
- (c) have regard to any rehabilitation policy advice that Comcare may issue.

NOTE: A failure to comply with these guidelines by a delegate of the rehabilitation authority or the employer, of which he or she is the principal officer, is taken to be a failure by the rehabilitation authority to comply.

CHAPTER 3 – EMPLOYER TO SUPPORT ITS REHABILITATION AUTHORITY

13. Responsibilities of the employer

The employer of the injured employee is responsible for:

- (a) providing prompt and effective rehabilitation to injured employees by providing adequate and timely support to the rehabilitation authority and case managers through:
 - (i) resourcing and training of case managers, managers and supervisors;
 - (ii) prompt identification and referral of employees who require rehabilitation; and
 - (iii) arrangements for the provision of rehabilitation services by one or more approved rehabilitation providers that meet the Operational Standards, or by the employer's rehabilitation authority where rehabilitation services are not required ;
- (b) providing, or assisting injured employees to obtain, suitable employment; and
- (c) the development and maintenance of a system for managing rehabilitation that meets:
 - (i) Comcare's rehabilitation Performance Standards and Measures set out in **Attachment A**;
 - (ii) the rehabilitation needs of the employer to deliver effective rehabilitation; and
 - (iii) the reporting requirements on the employer's rehabilitation performance - see Chapter 5 and **Attachment B**.

14. Engagement of approved rehabilitation providers

14.1 When engaging an approved rehabilitation provider, the employer is responsible for ensuring that it chooses a provider who:

- (a) holds current Comcare approval; and
- (b) has adequate resources and appropriate expertise to deliver for that employee the required rehabilitation services in a professional and timely manner.

NOTE: A directory of Comcare approved rehabilitation providers is available on-line at www.comcare.gov.au.

14.2 When obtaining the services of an approved rehabilitation provider, the employer should ensure:

- (a) the services are acquired through written contract between the employer and the provider; and
- (b) the contract terms include requirement that the provider comply with the Operational Standards and with any service standards developed with the employer.

14.3 Following the engagement of an approved rehabilitation provider, the employer is responsible for:

- (a) monitoring the provider's service delivery so as to ensure compliance by the provider with the Operational Standards and any service standards developed with the employer; and
- (b) notifying Comcare immediately of any significant failure by the provider to comply with the Operational Standards.

15. Suitable employment

Explanatory note

The key to achieving an early and successful return to work [or maintenance at work] of an injured employee lies in the employer's willingness, ability and commitment to provide duties within the capacities of the injured employee. This is a significant responsibility and critical to maximising the potential for a successful return to work. Employee perceptions of organisational support also have a significant influence on return to work outcomes.

The identification of suitable employment is the key factor in the design and delivery of rehabilitation to maximise the employee's capacity to undertake such employment. It requires a constructive and creative approach with commitment from senior managers and cooperation from line managers. The provision of suitable employment increases the opportunity for an injured employee to remain at work or safely return to work sooner than would otherwise be possible.

- 15.1 Where an employee is undertaking or has completed a rehabilitation program, the employer has a legal duty to provide the employee with, or to assist the employee to obtain suitable employment.
- 15.2 The employer is required to engage with the employee to:
- (a) ensure that the return to work hierarchy is followed so as to support the employee to return to work with the same employer wherever practicable, and consider retraining and redeployment alternatives where a return to work with the same employer is not practicable; and
 - (b) recognise that the employee's injury may be a disability as defined by the *Disability Discrimination Act 1992* and that discrimination in employment on the basis of that disability is unlawful.

NOTES:

1. See section 40 of the Act and section 15 of the *Disability Discrimination Act 1992*.
2. Section 40 of the Act does not require the employer to provide the employee with, or assist the employee to obtain, suitable employment unless the employee is undertaking, or has undertaken, a rehabilitation program.
3. Where an employee unreasonably fails or refuses to undertake a rehabilitation program, the employer is not obliged to provide or assist with suitable employment.

- 15.3 Where the rehabilitation authority is not the principal officer of the employer at the time of injury, and is unable to provide suitable duties, the employer at the time of injury shall be afforded the opportunity to assist in the coordination of suitable employment including redeployment, as any costs of rehabilitation rest with that employer.

NOTE: This reflects that the direct costs of compensation and rehabilitation are borne:

- (a) where the employer at the time of injury is a licensee, directly by that licensee under the licence; and
- (b) where the employer at the time of injury is a premium payer, by Comcare through premium funds.

CHAPTER 4 – CASE MANAGER’S ROLE

16. Rehabilitation delegations

- 16.1 A case manager shall ensure that they hold a current delegation from the relevant rehabilitation authority to perform the functions and exercise the powers of the rehabilitation authority under sections 36 and 37 of the Act.
- 16.2 Except for defence-related claims, a delegation can only be made to a person who is an officer or employee of the employer of which the rehabilitation authority is principal officer. A contracted claims manager, consultant, rehabilitation provider and any other non-employee have no authority to determine rehabilitation matters under sections 36 and 37 of the Act.
- 16.3 The Military Rehabilitation and Compensation Commission or the Service Chief may delegate their functions and powers under sections 36 and 37 of the Act as set out in paragraph 10.3 above.
- 16.4 In the performance of the case manager role the delegated officer or employee may be required to arrange rehabilitation assessments, determine rehabilitation programs, deal with matters of non-compliance and refer to the relevant authority request for reconsideration. These matters are addressed in the following Parts.

Chapter 4 - Part I – Rehabilitation Assessment

17. Early rehabilitation intervention

- 17.1 A case manager may arrange a rehabilitation assessment and/or provide a rehabilitation program prior to liability being determined for the injury if the injury appears to be work-related, from which there is an incapacity for work or impairment.
- 17.2 The case manager, in identifying the potential for early rehabilitation intervention, should have regard to:
- (a) any notification of a workplace injury;
 - (b) any request by an employee for a rehabilitation assessment;
 - (c) any report or notification of an employee being unable to perform his or her normal duties or reporting symptoms or discomfort;
 - (d) any workplace absences, especially any unplanned absence of three or more days;
 - (e) identification of any barriers to successful rehabilitation or return to work;
 - (f) other factors, such as previous injury, complex medical diagnosis or severe injury;
 - (g) any medical evidence or prognosis suggesting a possibility of re-injury at work; or
 - (h) factors in the work environment, including any perceived or actual adverse relationship with supervisors or co-workers.
- 17.3 Where a claim has been lodged the costs associated with any examination for the rehabilitation assessment and delivery of any rehabilitation program that occurred prior to the determination of liability remain payable by the relevant authority.
- 17.4 Where prior to liability being accepted by the relevant authority a case manager determines the requirement for an examination under section 36 or a program under section 37 that the employee shall be informed of their rights to request a reconsideration under sections 38 or 62 [as the case may be] and request a review by the Administrative Appeals Tribunal under section 64 of the Act in relation to those determinations.
- 17.5 Where the relevant authority denies liability in respect of the injury, the case manager can no longer arrange a rehabilitation assessment or provide a rehabilitation program under the Act. The employer may still provide rehabilitation to the employee under other arrangements, but the Act and these guidelines have no application to any such rehabilitation.
- 17.6 Where the relevant authority has denied liability, there is no obligation on the case manager to arrange a rehabilitation assessment or provide a rehabilitation program, even if that denial is the subject of a reconsideration request or application to the Administrative Appeals Tribunal.

NOTE: The rehabilitation authority has authority and responsibility for rehabilitation determinations and the relevant authority has authority and responsibility for compensation determinations: see Table 1 in paragraph 8. No rehabilitation under the Act can be provided after liability has been denied in respect of the injury: see section 4(8) of the Act.

18. Rehabilitation assessment

Explanatory note

The purpose of a rehabilitation assessment is to provide the case manager with an expert, impartial and informed written opinion about whether an employee is capable of undertaking, or continuing to undertake, a rehabilitation program, and where the employee is assessed as being capable, recommendations on the measures that such a program should include.

An assessment may not be required if the case manager is already in possession of a written opinion from a suitably qualified person that addresses the above criteria.

An assessment may require the employee to be examined by the assessor or assessment panel.

The assessment shall be performed by a suitably qualified person. It should be noted that a case manager may arrange an assessment but, unless suitably qualified, may not perform that assessment. Experience in case management is not a qualification.

18.1 Where an employee suffers an injury resulting in an incapacity for work or an impairment, a case manager:

- (a) shall arrange a rehabilitation assessment where the employee makes a written request;
- (b) should consider arranging a rehabilitation assessment where the injury has resulted, or is likely to result in, the employee being unable to attend and perform work for a continuous period of three or more working days; and
- (c) may arrange a rehabilitation assessment in any other case.

NOTE: For the purposes of (b) and (c) above, where adequate and appropriate advice and recommendations are already available, the case manager may, without arranging an assessment under section 36 of the Act, make a determination under section 37 of the Act and arrange a rehabilitation program taking into account the guidance contained in Part II of this chapter.

18.2 In considering whether to arrange a rehabilitation assessment for the purposes of paragraphs 18.1 (b) and 18.1 (c) above the case manager may have regard to any:

- (a) available reports by medical practitioners or other health professionals relating to the employee's injury, fitness for duty, incapacity for work or impairment;
- (b) previous rehabilitation assessment; and
- (c) rehabilitation program the employee is undertaking or has undertaken;

and decide if the advice and information already available is adequate and appropriate that it makes a rehabilitation assessment unnecessary.

18.3 Where a case manager decides to arrange a rehabilitation assessment, the case manager shall also:

- (a) decide:
 - (i) which assessor or panel is to make the assessment, and
 - (ii) whether the employee is required to attend an examination by that assessor or panel; and
- (b) provide the selected assessor or panel with all available material relevant to the making of the rehabilitation assessment.

19. Who can be an assessor

- 19.1 Section 36(2) of the Act provides that a rehabilitation assessment shall be made by:
- (a) a medical practitioner;
 - (b) a suitably qualified person [other than a medical practitioner]; or
 - (c) a panel comprising either or both of the above as nominated by the rehabilitation authority.
- 19.2 A suitably qualified person includes:
- (a) an approved rehabilitation provider;
 - (b) in relation to an assessment of an injured defence force member, a person nominated by the Military Rehabilitation and Compensation Commission or the relevant Service Chief under paragraph 148(1)(b) of the Act; and
 - (c) any person [whether or not an approved rehabilitation provider] who holds the qualifications, experience, skills, knowledge and other personal attributes that the *Criteria for Initial Approval or Renewal of Approval as a Rehabilitation Program Provider* [issued under section 34D of the Act] states are required in order to demonstrate competence to manage rehabilitation programs.

20. Examination for rehabilitation assessment

- 20.1 An examination of the employee will be required where there is either:
- (a) no medical evidence; or
 - (b) further objective evidence is needed by the assessor that can only be obtained by the employee undergoing an examination.
- 20.2 A case manager shall consider the following matters when deciding whether or not to require an employee to attend an examination by the assessor or panel, namely:
- (a) the adequacy of the information and opinions provided by:
 - (i) any available reports from medical practitioners or other treatment providers relating to the employee's injury or fitness for work; and
 - (ii) any previous rehabilitation assessments;
 - (b) the nature of the employee's injury;
 - (c) any apparent restrictions on the employee's capacity to work and activities of daily living; and
 - (d) whether the employee has failed or refused to undertake or complete a rehabilitation program.
- 20.3 Where a case manager determines under section 36(3) of the Act that an employee should attend an examination for a rehabilitation assessment, the case manager should serve a written notice of that determination on the employee requiring the employee to attend an examination and identifying the assessor or panel, date, time and place of the examination; and setting out the reasons for, and rights to request a review of the determination. A copy of that determination shall be provided to the relevant authority.

21. Outcome of rehabilitation assessment

- 21.1 A rehabilitation assessment is complete when the assessor [or panel] that conducted the assessment provides a written report to the case manager setting out:
- (a) their assessment of the employee's capability of undertaking a rehabilitation program;
 - (b) their opinion [and supporting reasons] of whether or not the employee requires, is capable of undertaking, or continues to undertake, a rehabilitation program at that time;
 - (c) a written report of any examination by the assessor [or panel] undertaken of the employee; and
 - (d) if the employee is assessed as being capable of engaging in a rehabilitation program:
 - (i) the recommendations [if any] as to the kind of program the employee should undertake; and
 - (ii) any other information that may assist the case manager in providing or arranging the rehabilitation program for the employee.

22. Notification of assessment

- 22.1 Where an assessment of the employee's capability to undertake rehabilitation is concluded, the case manager shall:
- (a) notify the outcomes and provide a copy of the assessment report [including any examination report] to:
 - (i) the employee; or
 - (ii) the employee's medical practitioner[s] and other health professional[s] where the employee's medical condition may necessitate the rehabilitation assessment outcome and report being first released to that practitioner or professional; and
 - (iii) if not already provided under (ii) above, the employee's medical practitioner[s] and other health professional[s]; and
 - (b) discuss the need, if any, of a rehabilitation program with the employee or, if (ii) above, with the treating medical practitioner; and
 - (c) notify the outcomes to:
 - (i) the employer [manager or supervisor]; and
 - (ii) the relevant authority, where costs are incurred in relation to an examination for a rehabilitation assessment.

NOTES:

1. If the assessment concludes that the employee does not require rehabilitation or does not require rehabilitation at that time, the case manager shall issue a determination in accordance with paragraph 25 below.
2. The case manager should promptly provide certified tax invoices or receipts in respect of those costs and a copy of the examination report to the relevant authority.

Chapter 4 - Part II – Rehabilitation Program

Explanatory note

The purpose of a rehabilitation program [return to work plan] is to deliver structured activities and services that assist an employee to be maintained at or return to work and/or maintain or improve the performance of activities of daily living.

A rehabilitation program is based on the principle that the employer, using established rehabilitation management policies and procedures, can facilitate the employee achieving a return to work in a coordinated way.

The program is delivered having considered the medical advice with regard to medical fitness and, where necessary, the use of an approved rehabilitation provider.

Close communication and cooperation between the injured employee, case manager, supervisor, treating practitioner and approved rehabilitation provider assists in the development of an effective return to work plan as part of the rehabilitation program.

23. Rehabilitation program

In arranging a rehabilitation program [including a return to work plan] the case manager should be aware that the purpose of rehabilitation is to deliver activities and services that:

- (a) assist an employee to be maintained at or return to work in accordance with the return to work hierarchy; and/or
- (b) maintain or improve the performance of activities of daily living.

24. Decision to provide a rehabilitation program

In deciding whether an employee should undertake a rehabilitation program the case manager shall have regard to:

- (a) the recommendations from the rehabilitation assessment; and
- (b) the matters under section 37(3) of the Act, including consultation with the employee, the employee's treating practitioner, supervisor and the approved rehabilitation provider as to the program's content; and
- (c) where the current rehabilitation authority is not the liable employer, the potential views and contributions of the liable employer to the rehabilitation program content shall be sought including their ability to provide suitable employment.

NOTES:

1. A rehabilitation program can be determined without a rehabilitation assessment under section 36 of the Act having been made such as where adequate and appropriate expert advice and recommendations were already available.
2. Consultation requires more than a mere exchange of information. Sufficient action must be taken to secure the employee's response and give that response proper attention. The employee must contribute to the decision making process in fact, not just in appearance.

25. Decision not to provide a rehabilitation program

Should the case manager decide, having regard to the rehabilitation assessment, that a rehabilitation program is not currently required, the case manager shall make a determination under section 37(1) of the Act and serve a written notice of the determination on the employee advising of the reasons for that decision and the right to request a review of the determination.

26. Who can provide the rehabilitation program

Where a case manager determines under section 37(1) of the Act that an employee should undertake a rehabilitation program the case manager shall also decide who is to provide the program to the employee. The Act states that:

- (a) the employer may provide a rehabilitation program for the employee itself; or
- (b) the case manager may make arrangements for the provision of a rehabilitation program by a rehabilitation program provider approved by Comcare; or
- (c) in, the case of a current or former defence force member, an approved rehabilitation provider nominated or a person nominated by the rehabilitation authority under section 148(1)(b) of the Act.

NOTE: An employer may make an application to Comcare under section 34B of the Act for approval as a rehabilitation program provider so as to use the services of appropriately qualified employees to deliver rehabilitation programs under paragraphs 27 and 28 below. Contact Comcare for assistance.

27. Circumstances where an approved rehabilitation provider shall be used

When a decision has been made to provide a rehabilitation program, an approved rehabilitation provider shall be used to deliver rehabilitation services under that program where:

- (a) any one or more of the following apply:
 - (i) the nature of the disease, injury or intended employment requires identified rehabilitation services to support the employee;
 - (ii) bio-psychosocial obstacles for recovery and return to work have been identified that require rehabilitation services;
 - (iii) where the employee is no longer employed by the Commonwealth agency or licensee [or they are unable to provide suitable employment] and the employee requires assistance to obtain suitable employment [e.g. job seeking and redeployment activities];
 - (iv) the employee's condition significantly deteriorates potentially impacting on the program success and they require rehabilitation assistance to remain at work or return to work; or
 - (v) the employee has been or will be medically discharged from military service; or
- (b) the employee requires assistance to return to work or maintain durability at work with the services of an approved rehabilitation provider as a result of the consideration made under paragraph 28 below.

28. Circumstances where an approved rehabilitation provider should be considered

The use of an approved rehabilitation provider should be considered when:

- (a) the employee and case manager are in different geographical locations;
- (b) the employee's disease or injury results, in whole or part, from any perceived or actual conflict in the workplace; or
- (c) the employee has previously unreasonably failed to undertake or complete a rehabilitation program.

NOTE: Comcare is able to issue a one off approval to a rehabilitation provider in a remote location where there are no available approved rehabilitation providers under section 34H of the Act.

29. Requirements on the rehabilitation authority when providing a program for the employee itself

A rehabilitation program can only be provided by the case manager [not involving the use of an approved rehabilitation provider] where:

- (a) the circumstances under paragraph 27 do not apply, and an approved rehabilitation provider has been considered unnecessary having regard to the circumstances under paragraph 28; and
- (b) the case manager has sufficiently clear written medical guidance on the proposed return to work program from:
 - (i) an assessment that has been performed under section 36 of the Act; or
 - (ii) a report or documentation described in paragraph 18.2(a) to support and manage the employee's return to work, maintenance at work, or upgrade of hours or duties without the need for rehabilitation provider services.

30. Matters to be aware of in determining a rehabilitation program

In determining that the employee should undertake a rehabilitation program a case manager shall have regard to the requirements of section 37(3) of the Act and:

- (a) if it has been previously determined that the employee should undertake a rehabilitation program [whether in respect of the same or a different injury] a case manager shall have regard to whether:
 - (i) the employee completed the program; and
 - (ii) if the program resulted in any improvement in the employee's capacity to work or activities of daily living; or
 - (iii) if the employee did not complete that program, whether the employee had a reasonable excuse for failing or refusing to complete that program; and
- (b) section 15 of the *Disability Discrimination Act 1992* – see **Dictionary**.

31. Making and notifying the rehabilitation program decision

31.1 The case manager shall:

- (a) give written notice to the employee of any rehabilitation program determination made; and

- (b) give a copy of all rehabilitation program determinations to:
 - (i) the relevant authority;
 - (ii) the approved rehabilitation provider;
 - (iii) the treating doctor;
 - (iv) the employee's manager or supervisor; and
 - (v) if the employer is not the liable employer, the liable employer.

irrespective of whether the rehabilitation program was provided by an approved rehabilitation provider or by the rehabilitation authority itself.

- 31.2 Where costs are incurred in relation to an employee's rehabilitation program:
- (a) the case manager shall promptly provide any certified tax invoices or receipts to the relevant authority; and
 - (b) if the employer is not the liable employer, the liable employer.

32. Altering or closing an existing rehabilitation program

- 32.1 A rehabilitation program is altered when the case manager decides that the rehabilitation program services, associated costs, program timeframes, end date or goals need to be changed.
- 32.2 A determination altering an existing rehabilitation program can only apply to rehabilitation provided on or after the date of that determination.
- 32.3 Before determining under section 37(1) of the Act whether an employee should undertake an altered rehabilitation program or cease to undertake a rehabilitation program altogether, the case manager is required to:
- (a) consult with the approved rehabilitation provider [if engaged];
 - (b) consider any advice from that provider or medical practitioner regarding more appropriate rehabilitation program goals, services, timeframes and the employee's capability to undertake a rehabilitation program;
 - (c) consider the need for a repeat rehabilitation assessment in accordance with paragraph 18; and
 - (d) discuss the proposed program alterations or closure with the employee and supervisor.
- 32.4 Where the case manager determines that the rehabilitation program should be altered or closed, the case manager shall serve the employee with a written notice advising the terms of, reasons for and the right to request a review of, that determination.
- 32.5 Where a case manager decides to close a rehabilitation program the case manager may, at a later date, arrange an assessment of the employee's capability of undertaking a new rehabilitation program and / or determine that the employee should undertake a new rehabilitation program in accordance with paragraphs 18 to 25 above.
- 32.6 Where the rehabilitation program's goals have been achieved the case manager shall:
- (a) advise the employee that the rehabilitation program is now closed; and
 - (b) document the rehabilitation program outcome.

NOTE: Comcare this includes completion and submission of the rehabilitation program closure form and closure report [from the rehabilitation provider]. Other relevant or determining authorities may have similar arrangements.

Chapter 4 – Part III – Employee Non-compliance

33. Employee non-compliance with rehabilitation

33.1 The case manager shall ensure, when determining that an employee attend an examination or undertake a rehabilitation program, that:

- (a) the employee is informed of the potential for compensation and rights under the Act to be suspended in the event that the employee refuses, fails to undertake or obstructs the examination or program, without reasonable excuse; and
- (b) the employee was informed that where they are unable to attend or undertake an examination or program that they are obliged to notify the case manager as soon as possible with the reasons why they are unable to attend an examination or undertake the program.

33.2 Where the case manager considers that the employee may have, without reasonable excuse, refused, failed to attend or undertake, or obstructed an examination or rehabilitation program, the case manager shall:

- (a) assess the extent of the refusal, the manner in which the employee failed to cooperate or the nature of the obstruction to ascertain the severity of the employee's non-compliance;
- (b) as soon as reasonably practicable, ask the employee to provide an explanation for such refusal, failure or obstruction; including in that request adequate guidance or instruction as to the evidence required and timeframes for response; and
- (c) consider whether the employee had a reasonable excuse for such refusal, failure or obstruction taking into account the employee's explanation or failure to provide one.

33.3 In considering the refusal, failure or obstruction the case manager should have regard to what constitutes 'reasonable excuse', including but not limited to:

- (a) the medical inability or risk to the employee in undertaking the rehabilitation examination or program - supporting medical evidence would be required if medical reasons are an issue; or
- (b) a critical and unforeseen incident;

and, that the employee's stated belief that an examination or rehabilitation program is not required or not appropriate does not, on its own, constitute a reasonable excuse. An employee's request for a reconsideration of a determination requiring attendance at an examination or to undertake a rehabilitation program, lodged prior to the refusal, failure or obstruction, may however be considered a reasonable excuse.

33.4 Where the case manager considers that the employee does have a reasonable excuse:

- (a) the case manager shall, in respect to the examination, arrange a further examination, if required, accommodating the reasons for the initial failure, refusal or obstruction; or
- (b) the case manager shall alter or close the rehabilitation program, or develop a new rehabilitation program accommodating the reasons for the initial failure or refusal in accordance with paragraph 32 above.

- 33.5 Where a case manager is of the opinion that the employee may have, without reasonable excuse, refused, failed or obstructed an examination or refused or failed to undertake a rehabilitation program:
- (a) unless the case manager is the delegated person referred to in paragraph 33.5(c), the case manager shall not make a decision under section 36(4) or 37(7) of the Act that the reasons were not reasonable;
 - (b) the case manager shall refer the details relating to the case for refusal, failure or obstruction for determination to a person delegated by the rehabilitation authority with the power to effect suspension of compensation under the Act [referred to as the delegated person];
 - (c) the delegated person is the officer most appropriate because he/she;
 - (i) is best experienced or qualified to deal with the nature of the refusal, failure or obstruction [such as medical disability, personnel or industrial issues etc.];
 - (ii) is of suitable seniority within the employer;
 - (iii) has no conflict of interest [such as the employee's supervisor]; or
 - (iv) is unlikely to jeopardise any future rehabilitation of the employee by being the delegated person; and
 - (d) the case manager shall ensure the opportunity to undertake an examination or resume the rehabilitation program remains available to the employee even where a suspension of compensation or rights under the Act has occurred.

NOTE: Subparagraph (iv) should be considered if the case manager is also the delegated person – in which case it is preferable for the case manager to avoid making the decision that results in suspension where that decision may compromise the effectiveness of the case manager's role.

- 33.6 The delegated person referred to above, upon receipt of details from the case manager shall:
- (a) consider the details provided by the case manager in respect to the employee's refusal, failure or obstruction;
 - (b) ensure the employee has been or is given natural justice and that procedural fairness obligations are fulfilled;
 - (c) decide whether the employee refused, failed to undergo or obstructed a rehabilitation assessment examination, or to undertake a rehabilitation program;
 - (d) assess the extent of the refusal, the manner in which the employee failed to cooperate or the nature of the obstruction to ascertain the extent to which that refusal, failure or obstruction significantly jeopardised the rehabilitation examination or rehabilitation program; and
 - (e) whether the employee has a reasonable excuse for that refusal, failure or obstruction.

NOTE: Natural justice and procedural fairness extends to allowing the employee access to representation when requested.

- 33.7 Where the delegated person is satisfied that the refusal, failure or obstruction was without reasonable excuse and was of a nature as to jeopardise the provision of effective rehabilitation, the delegated person shall make and

serve on the employee a determination under section 36(4) in respect to an examination or section 37(7) in respect to the rehabilitation program, addressing the matters considered above, and:

- (a) advising the employee that their rights to compensation [excluding the cost of medical treatment] are automatically suspended until they comply and that the suspension of entitlements commence from the date of the refusal, failure or obstruction; and
- (b) providing them with a notice of rights explaining their right to request a reconsideration if they are not satisfied with that decision.

33.8 The delegated person [or case manager] shall also provide copies of the determination to:

- (a) Comcare, where the employer is a Commonwealth agency;
- (b) the licensee [who is responsible for informing the contracted claims manager, if any] where the employer is a licensee; or
- (c) the Military Rehabilitation and Compensation Commission where the employee is or was a defence force member;

in order to arrange for the suspension of compensation and rights under the Act.

NOTE: Where, prior to liability, there has been unreasonable refusal, failure or obstruction to a rehabilitation examination or program, the issue of threshold liability shall be determined so as to allow for the determination of the cost of reasonable medical treatment under section 16 to be paid. There is no requirement to determine any other benefits to be paid until after the suspension period and only for benefits that arose outside the suspension period.

33.9 The case manager, upon being satisfied that the employee is now complying with the requirement to undertake a rehabilitation assessment examination or a rehabilitation program shall:

- (a) advise the delegated person accordingly; and
- (b) arrange through the relevant authority for the recommencement of the employee's compensation and rights under the Act.

Chapter 4 – Part IV – Request for Reconsideration

Explanatory note

An employee has the right to request a review (a reconsideration) of any decision made by way of determination under section 36 and/or 37 of the Act in respect to their rehabilitation.

34. Request for reconsideration

- 34.1 A request for reconsideration of a determination is limited to decisions made in respect to:
- (a) a requirement for the employee to attend an examination for purposes of assessing the employee's capability of undertaking a rehabilitation program;
 - (b) an advice that, following an assessment, a rehabilitation program is not required or not required at that time;
 - (c) a requirement that the employee undertake a rehabilitation program;
 - (d) a decision to alter the contents of the remainder of the rehabilitation program;
 - (e) a decision that the employee cease to undertake the rehabilitation program prior to its completion; and
 - (f) an advice that the employee's refusal, failure or obstruction to attend an assessment examination or refuses or fails to undertake a rehabilitation program was without reasonable excuse.
- 34.2 The Act specifies when a review shall be undertaken by Comcare, the licensee or the Military Rehabilitation and Compensation Commission. See paragraph 11 for details.

CHAPTER 5 – PERFORMANCE ASSESSMENT AND REPORTING

35. Non-compliance by an approved rehabilitation provider

The rehabilitation authority shall notify Comcare immediately of any significant failure by a contracted approved rehabilitation provider to comply with the Operational Standards.

36. Assessment and reporting

36.1 An employer, on behalf of its rehabilitation authority, shall ensure it:

- (a) undertakes audits of its rehabilitation management system;
- (b) promotes a continuous improvement strategy providing for appropriate remedial action identified by those audits;
- (c) reports rehabilitation performance to meetings of the employer's board or executive;
- (d) completes certification of compliance with the *Guidelines for Rehabilitation Authorities 2012*, subject to 36.2 below, as shown at **Attachment B**; and
- (e) upon request, provides Comcare with a copy of that certification and any other relevant documentation.

36.2 A licensee that has completed a *Certification of Licensee Improvement Program [LIP] Report* in respect of rehabilitation is not obliged to comply with paragraph 36.1(d) unless directed by the Safety, Rehabilitation and Compensation Commission to do so.

NOTE: Comcare guidance material and tools to assist in undertaking audits of the rehabilitation management system are available on-line at www.comcare.gov.au.

Attachment A - Performance standards and measures for employers

Explanatory note

The aim of a rehabilitation management system is to provide a system or framework within which the employer can meet its legal responsibilities to its employees for the prevention of injury and the effective management of work related injury.

Adoption of a systems based approach to injury management and return to work is essential to ensure successful injury prevention, early intervention, rehabilitation and return to work.

Comcare's rehabilitation management system framework shares common management system principles with a number of Standards such as AS/NZS Standard 4804:2001 as well as Environmental and Quality system standards.

Employers are expected to, and Comcare and the Safety, Rehabilitation and Compensation Commission will, assess the rehabilitation management system against the following five elements:

- Commitment and corporate governance
- Planning
- Implementation
- Measurement and evaluation
- Management systems review and improvement

Employer's rehabilitation management systems will be consistent with these Performance Standards. The degree to which the employer meets the standards will be judged against the Performance Measures.

In developing or maintaining a system to provide appropriate rehabilitation services to its injured employees the employer may undertake a risk assessment of its workplaces to gauge the nature and level of resources required to deliver effective rehabilitation.

The level of sophistication and detail in the rehabilitation management system is dependent upon:

- (a) the risk profile of the employer's industry;
- (b) employee numbers;
- (c) nature and location of employment premises; and
- (d) the frequency of injuries warranting rehabilitation assessments and rehabilitation programs.

1. Commitment and corporate governance

Sound corporate governance is the process by which organisations are directed, controlled and held to account. The employer's executive will provide stewardship for its rehabilitation management systems and commit adequate resources to ensure continuous improvement.

The employer will document its commitment to rehabilitation. This documentation will benchmark the employer's objectives, be used to formulate strategic direction and be reviewed to ensure it remains relevant to the employer and strives for continuous improvement. It will be endorsed and supported at the executive level

and be relevant to the employer's overall values, vision and business objectives.

1.1 Performance Standards

1.1.1 The employer will:

- (i) set the direction for its management systems through a documented commitment by senior executive; and
- (ii) establish systems that:
 - recognise legislative obligations;
 - promote the principle of continuous improvement and provide for effective rehabilitation arrangements;
 - promote communication of relevant information to employees; and
 - provide for internal and external accountability.

1.2 Performance Measures

1.2.1 There is evidence of:

- (i) communication of senior executive commitment to sound rehabilitation management systems;
- (ii) the employer monitoring and satisfying legal requirements related to rehabilitation;
- (iii) continuous improvement of the management systems;
- (iv) ongoing consultation with employees regarding rehabilitation; and
- (v) an audit program for rehabilitation systems.

2. Planning

In consultation with relevant stakeholders the employer develops plans to support its management system.

2.1 Performance Standards

2.1.1 The employer's plans will:

- (i) provide for legislative compliance;
- (ii) include objectives, targets and performance measures;
- (iii) provide for effective rehabilitation; and
- (iv) provide for appropriate training requirements.

2.2 Performance Measures

2.2.1 There is evidence that:

- (i) plans address legislative and regulatory compliance;
- (ii) plans identify the employer's core rehabilitation activities and provide direction regarding performance outcomes; and
- (iii) training plans are consistent with identified requirements.

3. Implementation

The employer ensures that sufficient resources and supporting mechanisms are provided to achieve its strategic plans.

3.1. Performance Standards

3.1.1 The employer will:

- (i) allocate adequate resources to support its programs;
- (ii) implement relevant training programs;
- (iii) define and communicate responsibilities to relevant stakeholders;
- (iv) ensure that employees are aware of their legislative rights and obligations;
- (v) maintain the relevant level of reporting, records and/or documentation to support the employer's programs and legislative compliance;
- (vi) maintain the confidentiality of information and apply legislative requirements; and
- (vii) ensure consultation between all parties in regards to the rehabilitation process.

3.2 Performance Measures

3.2.1 There is evidence that:

- (i) processes are in place to identify the need for early assessment for rehabilitation;
- (ii) rehabilitation assessments are undertaken where required;
- (iii) rehabilitation programs are implemented; and
- (iv) employees are informed of their rights in respect of rehabilitation.

4. Measurement and evaluation

The employer measures, monitors and evaluates its performance and takes prompt corrective action when necessary.

4.1 Performance Standards

4.1.1 The employer will:

- (i) monitor planned objectives and performance measures for rehabilitation activities;
- (ii) establish an audit program to measure performance of its rehabilitation systems;
- (iii) ensure that these audits are performed by competent personnel;
- (iv) ensure audit outcomes are appropriately documented, actioned and reviewed at appropriate senior executive level;
- (v) ensure all audits are conducted in accordance with the requirements of Comcare;
- (vi) communicate to its employees on the outcomes and results of audits; and
- (vii) provide Comcare with reports as requested.

4.2 Performance Measures

4.2.1 There is evidence of:

- (i) audits conducted by the employer and implementation of corrective

- actions; and
- (ii) reporting against the employer's own internal performance indicators and against any rehabilitation performance measures set by Comcare.

5. Management systems review and improvement

5.1 Performance Standards

The employer regularly reviews and continually improves its systems.

5.1.1 The employer will:

- (i) analyse performance outcomes against documented objectives to determine areas requiring improvement; and
- (ii) promote and implement continuous improvement strategies.

5.2 Performance Measures

5.2.1 There is evidence that the results of reviews of the employer's performance are used to continually improve its rehabilitation systems.

Attachment B - Certification of Compliance with the Guidelines for Rehabilitation Authorities 2012

Reporting Period: From to

I, of
CEO/Principal Officer/Rehabilitation Authority *Employer Name*

certify that this Compliance Report:

- (a) was completed in accordance with the requirements of the *Guidelines for Rehabilitation Authorities 2012*;
- (b) accurately reflects the Rehabilitation Management system activities by in the reporting period;
Employer Name
- (c) accurately describes’s rehabilitation performance in the reporting period; and *Employer Name*
- (d) includes a schedule attached hereto listing all non-compliances [if any] identified during the reporting period, the related corrective actions and confirmation of their implementation.

SIGNED

DESIGNATION

DATE

**Schedule to the Guidelines for Rehabilitation Authorities 2012
Compliance Report**

Nature of non-compliance	How and when identified	Nature of corrective action	Date corrective action completed or to be completed

Attachment C – Prescribed Rehabilitation Authorities

1. Rehabilitation authority

Table 2 – Rehabilitation authority [for defence force members – see Table 3]

Description of employee	Applicable rehabilitation authority
An injured employee of: <ul style="list-style-type: none"> • the Commonwealth, • a Commonwealth authority • a licensee who remains employed within the same Entity, Commonwealth authority or licensee.	The principal officer of the Entity, Commonwealth authority or licensee who currently employs the injured employee.
An injured employee of: <ul style="list-style-type: none"> • the Commonwealth, • a Commonwealth authority • a licensee who ceases to be employed within the same Entity, Commonwealth authority or licensee but remains employed with any of these employers.	The principal officer of the Entity, Commonwealth authority or licensee who currently employs the injured employee.
An injured employee of: <ul style="list-style-type: none"> • the Commonwealth, • a Commonwealth authority • a licensee who ceases to be employed by the Commonwealth or any Commonwealth authority or licensee.	The principal officer of the Entity, Commonwealth authority or licensee who most recently employed the injured employee.
A 'civilian employee' as defined in section 3 of the <i>United States Naval Communication Station (Civilian Employees) Act 1988</i>	Comcare

NOTES:

1. The Australian Capital Territory Government is taken to be a Commonwealth authority for the purposes of the Act.
2. The ACT Commissioner for Public Administration has been declared the principal officer of the rehabilitation authority for the Australian Capital Territory under section 4(14) of the Act.
3. Under section 35 of the Act, the Minister has the power to declare an Entity or Commonwealth authority as an exempt authority. In accordance with section 4(1) of the Act, Comcare is the rehabilitation authority for employees of an exempt authority. The Minister has not made any declaration of "exempt authority" under section 35, however section 4(1) of the *United States Naval Communication Station (Civilian Employees) Act 1988* provides that civilian employees as defined by that Act are taken to be employed by an exempt authority. Comcare is also the relevant authority for "civilian employees" in accordance with that Act.

2. Machinery of Government changes

For the purposes of section 7.1 and Table 2, where:

- (a) the Entity or Commonwealth authority in which the injured employee was most recently employed is abolished; and
- (b) the relevant function of that Entity or Commonwealth authority is transferred to another Entity or Commonwealth authority;

the injured employee shall be taken to have been most recently employed in the Entity or Commonwealth authority to which the relevant function was so transferred under the Administrative Arrangements Orders made under the *Constitution*.

NOTE: This provision has no application to employees of the Australian Capital Territory or of a licensee.

3. Rehabilitation authority – Defence Force Members

For employees injured before 1 July 2004 as a defence force member, the rehabilitation authority is shown in Table 3 below.

Table 3 – Rehabilitation authority [defence force members]

Description of employee	Applicable rehabilitation authority
Defence force member injured before 1 July 2004 who continues in Permanent Force employment	The Chief of the relevant Service
Defence force member injured before 1 July 2004 who ceases to be a member of the Permanent Force	The Military Rehabilitation and Compensation Commission.
Defence force member injured before 1 July 2004 who continues or ceases to be a member of the part-time Reserves	The Military Rehabilitation and Compensation Commission.

NOTES:

1. Section 146 of the Act displaces paragraph (d) of the definition of ‘rehabilitation authority’ provided by section 4(1) of the Act.
2. Permanent Force employment includes continuous full-time Reservists.
3. The Act has no application to defence force members injured on or after 1 July 2004. They are covered by the *Military Rehabilitation and Compensation Act 2004* administered by the Department of Veterans’ Affairs and the Military Rehabilitation and Compensation Commission.

Legislative References

Table 4 –Legislation and sections referred to in the Guidelines for Rehabilitation Authorities 2012

<i>Safety, Rehabilitation and Compensation Act 1988</i>	
Legislative Reference	Section Title
Section 4	Interpretation
Section 5	Employees
Section 5A	Definition of <i>injury</i>
Section 5B	Definition of <i>disease</i>
Section 14	Compensation for injuries
Section 16	Compensation in respect of medical expenses etc.
Section 34B	Persons may seek approval as rehabilitation program providers
Section 34E	Comcare to establish operational standards for rehabilitation program providers
Section 34F	The initial approval decision
Section 34H	Comcare may also approve persons as rehabilitation program providers on its own initiative
Section 34L	The renewal decision
Section 35	Exempt authorities
Section 36	Assessment of capability of undertaking rehabilitation program
Section 37	Provision of rehabilitation programs
Section 38	Review of certain determinations by Comcare
Section 39	Compensation payable in respect of certain alterations etc.
Section 40	Duty to provide suitable employment
Section 41	Rehabilitation authorities to comply with guidelines
Section 41A	Delegation by rehabilitation authority
Section 62	Reconsideration of determinations
Section 64	Applications to the Administrative Appeals Tribunal
Section 73B	Delegation by Comcare
Section 74	Constitution of Comcare
Section 141	Definitions (Defence related claims)
Section 146	Rehabilitation authority etc. (Defence related claims)
Section 148	Rehabilitation programs (Defence related claims)
Section 152	Delegation (Defence related claims)

<i>Military Rehabilitation and Compensation Act 2004</i>	
Legislative Reference	Section Title
Section 39	Definition of rehabilitation authority
Section 384	Delegation
Section 438	Service chiefs' delegation

<i>Disability Discrimination Act 1992</i>	
Legislative Reference	Section Title
Section 15	Discrimination in employment

<i>United States Naval Communication Station (Civilian Employees) Act 1988</i>	
Legislative Reference	Section Title
Section 4(1)	Application of Compensation Act to civilian employees

Dictionary

In the *Guidelines for Rehabilitation Authorities 2012* unless the contrary intention appears, words bear the same meaning as defined by the Act:

Act means the *Safety, Rehabilitation and Compensation Act 1988*.

activities of daily living means activities that an employee needs to perform to function in a non-specific environment.

approved rehabilitation provider means a body, firm or person approved by Comcare under section 34F, 34H or 34L of the Act to provide rehabilitation programs. An approved rehabilitation provider is sometimes referred to as a 'workplace rehabilitation provider'.

case manager, in relation to an employee, means:

- (a) in relation to an employee of a Commonwealth agency [other than an exempt authority] or licensee or defence force member -
 - (i) the rehabilitation authority; or
 - (ii) the person to whom the rehabilitation authority has made a delegation under sections 41A or 152 of the Act, or
- (b) in the case of an employee of an exempt authority-
 - (i) Comcare; or
 - (ii) the person to whom Comcare has made a delegation under section 73B of the Act of functions and powers under Part III of the Act,

who coordinates and manages the rehabilitation of the employee.

NOTES:

1. A delegation under section 41A of the Act can only be made to an officer or employee of the employer.
2. The delegation may be made to an officer or employee who is not the case manager. The case manager may still perform certain roles under sections 36 and 37 but the determinations are made by the delegated officer or employee.

claim means a claim by an employee for compensation under the Act.

claims manager, in relation to an employee, means -

- (a) if the employee was injured whilst employed by a licensee - the employee, officer or agent of the licensee who manages the employee's claim;
- (b) if the employee was injured whilst employed as a defence force member, the delegate of the Military Rehabilitation and Compensation Commission who manages the employees claim; and
- (c) in any other case - the delegate of Comcare who manages the employee's claim.

Commonwealth agency means:

- (a) an Entity as defined in section 4(1) of the Act; or
- (b) a Commonwealth authority that is not a licensee.

Commonwealth authority bears the same meaning as section 4(1) of the Act.

defence force member is or was a member of the Permanent Force, a continuous full-time reservist or part-time reservist who was injured prior to 1 July 2004

defence-related claim bears the same meaning as section 141 of the Act.

determination - see rehabilitation determination.

Disability Discrimination Act 1992

Section 15 Discrimination in employment.

- (1) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against a person on the ground of the other person's disability:
 - (a) in the arrangements made for the purpose of determining who should be offered employment; or
 - (b) in determining who should be offered employment; or
 - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against an employee on the ground of the employee's disability:
 - (a) in the terms or conditions of employment that the employer affords the employee; or
 - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
 - (c) by dismissing the employee; or
 - (d) by subjecting the employee to any other detriment.
- (3) Neither paragraph (1)(a) nor (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's disability, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

disease bears the same meaning as in section 4(1) and section 5B of the Act

early rehabilitation intervention means intervention by way of a rehabilitation assessment or rehabilitation program without necessarily waiting for the employee to lodge a claim or the relevant authority to accept liability in respect of the employee's disease or injury.

employee bears the same meaning as in section 5 of the Act.

employer in relation to an employee, means:

- (a) if the employee is currently employed by the Commonwealth – the Entity in which the employee is so employed;
- (b) if the employee is currently employed by a Commonwealth authority or licensee – that Commonwealth authority or licensee; and
- (c) if the employee is not currently employed by the Commonwealth or any Commonwealth authority or licensee – the Entity, Commonwealth authority or licensee that most recently employed the employee; and

unless the employer is an exempt authority, also includes the principal officer of the employer.

exempt authority means an Entity or a Commonwealth authority declared by the Minister under section 35 of the Act to be an exempt authority and also includes any other Commonwealth agency or other organisation in relation to which any Act or legislative instrument declares or provides for Comcare to be rehabilitation authority in relation to its employees – see Table 2 in Attachment C.

impairment, bears the same meaning as in section 4(1) of the Act and means the loss, the loss of the use, or the damage or malfunction, of any part of the body or any bodily system or function or part of such system or function.

incapacity for work bears the same meaning as in section 4(9) of the Act.

injury bears the same meaning as in section 4(1) and section 5A of the Act.

liable employer means the employer determined under the Act to be liable to pay compensation to the employee for the injury or disease – the liable employer may not necessarily be the current rehabilitation authority.

licensee bears the same meaning as in section 4(1) of the Act.

Operational Standards means the operational standards for rehabilitation program providers as from time to time in force under section 34E of the Act.

NOTE: The Operational Standards are a disallowable legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

person means a natural person.

principal officer bears the same meaning as in section 4(1) of the Act.

rehabilitation authority, in relation to an employee, means:

- (a) for defence-related claims, the employee's Service Chief or the Military Rehabilitation and Compensation Commission as set out in section 39 of the Military Rehabilitation and Compensation Act 2004;
- (b) if the employer is an exempt authority, Comcare; and
- (c) for all other cases, the person who is principal officer of the employee's employer; and

except where the employer is an exempt authority, also includes the employer.

NOTE: See definition provided by sections 4(1) and 146 of the Act.

rehabilitation assessment means an assessment under section 36 of the Act of an employee's capability of undertaking, or continuing to undertake, a rehabilitation program.

rehabilitation determination means a decision made by a rehabilitation authority in respect to any of the following:

- (a) a requirement under section 36(3) of the Act that an employee attend an examination for a rehabilitation assessment;
- (b) a decision under section 36(4) of the Act that an employee did not have a reasonable excuse for failing to attend or cooperate at an examination for a rehabilitation assessment;
- (c) a decision under section 37(1) of the Act as to whether an employee should undertake a rehabilitation program including, where relevant, a decision as to who should provide that rehabilitation program in accordance with section 37(2);
- (d) a decision under section 37(1) to alter the contents of a rehabilitation program;
- (e) a decision under section 37(1) of the Act that the employee cease to undertake a rehabilitation program; and
- (f) a decision under section 37(7) of the Act that an employee did not have a reasonable excuse for not undertaking or completing a rehabilitation program.

NOTE: A decision to pay the cost of any rehabilitation program provided is a decision made by the relevant authority and not the rehabilitation authority.

rehabilitation program means, as defined in section 4(1) of the Act and for the purpose of this guideline, a structured series of activities and assistance to:

- (a) maintain or return an employee in suitable employment; and/or
- (b) maintain or improve an employee's activities of daily living; and

includes a return to work plan.

relevant authority means, as defined in section 4(1) of the Act and for the purposes of these guidelines:

- (a) if the employee suffered the disease or injury whilst employed by a licensee – that licensee; and
- (b) in any other case – Comcare.

return to work includes being maintained at work.

return to work hierarchy means the following descending order of goals in relation to maintaining or returning an employee to suitable employment:

- (a) same duties and role in the same workplace;
- (b) modified duties and role in the same workplace;
- (c) different duties and role in the same workplace;
- (d) same or modified duties and role in a different workplace; and
- (e) different duties and role in a different workplace.

return to work plan means a plan of activities and assistance to maintain an injured employee at, or return him or her, to work.

suitable employment bears the same meaning as in section 4(1) of the Act.

workplace rehabilitation means a managed process involving timely intervention with appropriate and adequate services based on assessed need and is aimed at maintaining injured or ill employees in, or returning them to, suitable employment.

workplace rehabilitation provider – see approved rehabilitation provider.