



# JURISDICTIONAL POLICY ADVICE NO. 2014/10

## *Safety, Rehabilitation and Compensation Act 1988 (SRC Act)*

### The meaning of medical treatment—‘curative apparatus’

#### PURPOSE

1. This Jurisdictional Policy Advice (JPA):
  - > provides guidance on the meaning of ‘curative apparatus’ within the meaning of ‘medical treatment’ in paragraph 4(1)(h) of the SRC Act
  - > advises determining authorities that in order to consider a device a ‘curative apparatus’ within the meaning of medical treatment in the SRC Act, the design or adaptation of that device needs to be for use in medical treatment or the curative process
  - > restates the law as expressed in *Heffernan v Comcare*, rather than expressing a new requirement or policy
  - > applies to all determining authorities when determining compensation in respect of medical expenses under section 16 of the SRC Act.

#### BACKGROUND

2. Section 16 of the SRC Act provides that an employee is entitled to compensation for appropriate costs associated with medical treatment that was reasonable for the employee to obtain in relation to their compensable injury<sup>1</sup>.
3. For a determining authority to pay compensation under section 16 of the SRC Act, the medical treatment obtained by the employee must first meet the definition of ‘medical treatment’. The term ‘medical treatment’ is defined at subsection 4(1) of the SRC Act<sup>2</sup>.
4. The Full Court of the Federal Court (FCFAC) recently considered the definition of medical treatment in *Heffernan v Comcare* (*Heffernan*)<sup>3</sup>. In *Heffernan*, the FCFAC clarified that the modified motor vehicle should not be considered a ‘curative apparatus’ within the meaning of ‘medical treatment’, and should therefore not be compensated under section 16 of the SRC Act. The FCFAC’s reasoning for that decision is considered in this JPA.

1 Subsection 16(1)—“Where an employee suffers an injury, Comcare is liable to pay, in respect of the cost of medical treatment obtained in relation to the injury (being treatment that it was reasonable for the employee to obtain in the circumstances), compensation of such amount as Comcare determines is appropriate to that medical treatment.” Subsection 4(10) and 4(10A) define a reference to ‘Comcare’.

2 Subsection 4(1)—“**medical treatment means:** (a) medical or surgical treatment by, or under the supervision of, a legally qualified medical practitioner; or (b) therapeutic treatment obtained at the direction of a legally qualified medical practitioner; or (c) dental treatment by, or under the supervision of, a legally qualified dentist; or (d) therapeutic treatment by, or under the supervision of, a physiotherapist, osteopath, masseur or chiropractor registered under the law of a State or Territory providing for the registration of physiotherapists, osteopaths, masseurs or chiropractors, as the case may be; or (e) an examination, test or analysis carried out on, or in relation to, an employee at the request or direction of a legally qualified medical practitioner or dentist and the provision of a report in respect of such an examination, test or analysis; or (f) the supply, replacement or repair of an artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance; or (g) treatment and maintenance as a patient at a hospital; or (h) nursing care, and the provision of medicines, medical and surgical supplies and curative apparatus, whether in a hospital or otherwise; or (i) any other form of treatment that is prescribed for the purposes of this definition.”

3 [2014] FCFAC 2.

## MEDICAL TREATMENT

5. Mr Heffernan suffered a work-related injury resulting in chronic back pain and complications. Due to that injury, he relies on a modified motor vehicle to allow him to drive without discomfort.
6. Mr Heffernan made a claim to Comcare (the determining authority) under section 16 of the SRC Act for the total cost of purchase and modification of a motor vehicle. Comcare denied liability on the grounds that the modified vehicle did not qualify as 'medical treatment'. Nevertheless, Comcare accepted liability for modifications to a motor vehicle under paragraph 39(1)(d) of the SRC Act.
7. Comcare's denial of liability under section 16 of the SRC Act was upheld by the FCAFC in *Heffernan*. The FCAFC found that the modified vehicle could not be defined as 'medical treatment' under subsection 4(1) of the SRC Act because it was not an 'aid or appliance' under paragraph (f), nor a 'curative apparatus' under paragraph (h). This was because:
  - > Paragraph (f) makes it clear that the 'aid or appliance' must be similar in nature to a medical or surgical aid or appliance. A motor vehicle, even with modifications, is not similar in nature to a medical or surgical aid or appliance.
  - > In order for a device to be a 'curative apparatus' under paragraph (h), it needs to be designed or adapted for use in medical treatment or the curative process. In *Heffernan*, the modified vehicle did not assist in curing, slowing down or preventing the deterioration of his medical condition. Hence, it did not fall within the meaning of a 'curative apparatus'.
8. The FCAFC therefore ruled that the costs associated with the purchase and modification of this vehicle could not be compensated under section 16 of the SRC Act<sup>4</sup>.

## POLICY ADVICE

9. Determining authorities are advised that when they compensate a medical cost under section 16 of the SRC Act, a motor vehicle, or other device (i.e. an apparatus), should not be considered a 'curative apparatus' under paragraph 4(1)(h) of the SRC Act, if that device is not designed or adapted for use in medical treatment or the curative process.
10. Medical treatment or the curative process is aimed at:
  - > curing or treating a medical condition; or
  - > slowing down or preventing the deterioration of a medical condition.
11. It is not aimed at:
  - > providing enjoyment, such as via a recreational or leisure activity; or
  - > aiding general health and wellbeing (as opposed to curing a specific medical condition).
12. Consequently, for a device to be considered a 'curative apparatus', the use of that device must cure, slow down or prevent the deterioration of an actual medical condition suffered by the employee.
13. However, any such 'curative apparatus' (as per the definition of 'medical treatment' under section 4 of the SRC Act) would still need to be 'reasonable to obtain' and obtained at an 'appropriate cost' for that medical treatment to be compensable under section 16 of the SRC Act.

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<sup>4</sup> However, the FCAFC left open the possibility of a successful claim being made under paragraph 39(1)(e) of the SRC Act. It noted that the meaning of an 'aid or appliance' under that paragraph was contextually different to paragraph (h) of section 4.

### Example 1—Motorised wheelchair

An employee, suffering from paraplegia due to a workplace accident, requests reimbursement under section 16 of the SRC Act for the purchase of a motorised wheelchair.

*Could the motorised wheelchair be considered a 'curative apparatus' as per the definition of medical treatment under section 4 of the SRC Act?*

Most likely not. A motorised wheelchair, while aiding an employee's mobility and personal independence, does not cure or treat a physical injury (i.e. paraplegia). A motorised wheelchair is not designed for that purpose. Hence, it is unlikely to be defined as a curative apparatus.

### Example 2—Exercise equipment

An employee with a work-related lower-back injury requests reimbursement under section 16 of the SRC Act for the purchase of a kettle bell for use in core strength exercises. The employee's treating doctor has recommended an exercise program, requiring this item, for strengthening the muscles in their lower-back. Using the kettle bell will not cure the injury, but the doctor believes it will prevent further deterioration of the existing condition.

*Could the kettle bell, under these circumstances, be considered a 'curative apparatus' as per the definition of medical treatment under section 4 of the SRC Act?*

Very likely. The reason is that the kettle bell provides a clear medical benefit in relation to the employee's lower-back injury. Hence, it could be considered a 'curative apparatus' under paragraph 4(1)(h) of the SRC Act. However, while meeting the definition of medical treatment under section 4 of the SRC Act, it would not automatically qualify for compensation under section 16 of the SRC Act, unless it was also reasonable to obtain and obtained at an 'appropriate cost'.

14. If there is some uncertainty about the curative application of a purchased device, the determining authority should seek additional clarification from a legally qualified medical professional.

## FURTHER INFORMATION

### Review date

15. This JPA will be reviewed by 31 December 2014.

### Contact Comcare

16. For more information, please contact our call centre on 1300 366 979 or email [compensation.policy@comcare.gov.au](mailto:compensation.policy@comcare.gov.au).

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