

Compensation for loss of, or damage to, property used by an employee. Section 15 of the SRC Act 1988

1. Purpose

The purpose of this Circular is to explain section 15 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

2. Section 15 of the SRC Act

Compensation for loss of or damage to property used by employee

15(1) If:

(a) an employee has an accident arising out of and in the course of his or her employment by the Commonwealth or a licensed corporation; and

(b) the accident does not cause injury to the employee but results in the loss of, or damage to, property used by the employee;

Comcare is liable to pay compensation to the employee of an amount equal to the amount of the expenditure reasonably incurred by the employee in the necessary replacement or repair of the property.

15(2) For the purposes of subsection (1), expenditure incurred by an employee in the necessary replacement or repair of property used by the employee shall be taken to include any fees or charges paid or payable by the employee to a legally qualified medical practitioner or dentist or other qualified person for a consultation, examination, prescription or other service reasonably rendered in connection with the replacement or repair.

15(3) Compensation is not payable under this section if the loss or damage is attributable to the serious and wilful misconduct of the employee.

3. What is 'property used by the employee'?

Subsection 4(1) of the SRC Act states 'property used by the employee' means:

"an artificial limb, or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the employee."

'Property' could include such things as spectacles, hearing aid, prosthetics, walking stick or frame, wheelchair, denture, artificial eye, or other medical or surgical aid and appliance.

4. Accident arising out of and in the course of employment

Section 15 requires that the accident arose both out of **and** in the course of employment. In other words, the accident must have happened:

- while an employee was in the course of his or her employment, AND
- in circumstances where there was a direct relationship between the duties being undertaken and the accident.

5. The **employee** must have had the 'accident' - not the property

The employee must have had an accident before a claim under subsection 15(1) may be considered. Where the employee does not have an accident, any loss or damage to property is not covered by section 15 of the SRC Act.

Example

An employee leaves her spectacles on the desk. A box, placed on them, breaks the spectacles. There is no accident to the employee, so compensation would not be payable under section 15.

However, Comcare considers that there may be liability even though an employee is not using the property for the purpose for which it is intended at the time of the accident.

Example

An employee trips while at work, and in the subsequent fall breaks the spectacles in his jacket pocket. He does not sustain any personal injury. As it is the employee who has had the accident, then the cost of repairing or replacing the damaged spectacles would normally be compensable, (unless subsection 15(3) applies).

6. Accident not involving injury

Section 15 deals with accidents that do not cause injury. If an employee suffers an accident, as a result of which he or she:

- is injured, and/or
- seeks medical treatment and/or
- is incapacitated for work,

then the claim will be considered under subsection 14(1) of the SRC Act, with the claim for the supply, replacement or repair of any property being assessed under subsection 16(3).

7. Section 15 only covers certain costs

Subsection 15(1) provides for expenditure reasonably incurred in the necessary replacement or repair of an employee's property.

Subsection 15(2) provides for the payment of the reasonable cost of a consultation, examination, prescription or other service reasonably rendered in connection with the replacement or repair of property.

There is no provision for the payment for an

employee's time off work where, for example, a person cannot work because they are waiting for their spectacles to be repaired.

8. Serious & wilful misconduct

Subsection 15(3) precludes compensation where the loss or damage is attributable to the serious and wilful misconduct of the employee.

9. Who owns the purchased property?

Where Comcare pays for the replacement of a piece of property under section 15 of the SRC Act, the item is owned by the employee, and they can take it with them when they move to a different employer or cease employment.

10. Further information

For further information please call our Workers' Compensation Enquiry Line 1300 366 979.

11. Disclaimer

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Further information

For further information, please call Peter Goulding or Denise Sykes on 1300 366 979, or send them an e-mail: training@comcare.gov.au