



Australian Government

Comcare

# Customer Circular

Issue 49 March 2004

## Incapacity payments after age 65 - amendment to the SRC Act

This Customer Circular revokes and replaces Customer Circular No. 34 of January 2000.

### Purpose

This Circular is written to inform you of a change to the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) entitling some employees to incapacity payments after the age of 65 and the impact of this on redemption calculations.

### Background

On 1 October 2001 the SRC Act was amended in several areas, including the provisions relating to compensation for incapacity payable to employees injured after the age of 63. A Customer Circular was not issued at the time to revoke and replace Customer Circular 34 of January 2000.

### What were the previous provisions?

Subsection 23(1) of the SRC Act provides that compensation for incapacity is not payable to a person who has reached the age of 65, which was the normal retirement age at the time the Act originally came into effect.

Section 23(1A) of the SRC Act was added with effect from 5 December 1999. This amendment meant that people employed under the Public Service Act 1999 would have access to a maximum of 104 weeks' incapacity payments if injured after the age of 63.

Section 30 provided for the redemption of weekly incapacity payments where certain criteria are met. The section contained a formula for calculating the redemption amount based on weekly incapacity payments ceasing at age 65.

### Reason for the amendment

The amendment of 1 October 2001 *extended* the provisions - relating to incapacity after 65 that applied to APS employees as a result of the introduction of Section 23 (1A) - *to non-APS employees*. Section 30 is affected in the calculation. The date of Royal Assent for this amendment was 1 October 2001.

### What are the new provisions?

Subsections 23(1) and 23(1A) were amended on 1 October 2001 to read as follows:

- "(1) Compensation is not payable under section 19, 20, 21, 21A or 22 to an employee who has reached 65.
- (1A) However, if an employee who has reached 63 suffers an injury (whether before or after the commencement of this subsection):
- (a) subsection (1) does not apply; and
  - (b) compensation is payable under section 19, 20, 21, 21A or 22 in respect of the injury:
    - (i) to the extent that this Act (other than subsection (1)) allows; and
    - (ii) for a maximum of 104 weeks (whether consecutive or not) during which the employee is incapacitated."

Section 30(3) has been amended by changing the definition to include the following:

"*n* means the number worked out using the formula: Number of days/365 where:

*number of days* means the number of days in the period beginning on the day after the day on which the determination is made and ending:

- (a) if the employee is injured before reaching 63 years of age- on the day immediately before the day on which the employee reaches 65 years of age; and
- (b) if the employee is injured on or after reaching 63 years of age-on the day immediately before the employee would cease to be entitled to receive compensation under section 19, 20, 21 or 21A of this Act."

## To whom do these amendments apply?

### *Section 23*

If any employee is injured after 1 October 2001 and is aged 63 or over, they are able to access a maximum of 104 weeks' incapacity.

If **any** employee was injured before 1 October 2001, was aged 63 or over at the date of injury and was receiving incapacity payments at 1 October 2001, they are able to access a maximum of 104 weeks' incapacity.

The circumstances in which an employee is **not** entitled to incapacity past the age of 65 are if:

- their injury occurred before the age of 63; OR
- they were a non-APS employee, injured after age 63, whose entitlement to incapacity ceased because they turned age 65 before 1 October 2001; OR
- they were a non-APS employee, injured before 1 October 2001 and were aged 65 or over at the date of injury;

regardless of when they lodge their claim.

### *Section 30 - Redemption*

In calculating the redemption entitlement for these employees, the "number of days" for the purposes of paragraph (b) of the definition at 30(3), is calculated by subtracting the number of days' incapacity since the injury from the total number of days in 104 weeks.

## How do the amendments work?

An employee, aged over 63 years who suffers a compensable disease or injury, is entitled to

receive incapacity benefits under the SRC Act for a maximum period of two years.

An employee who suffers a compensable disease or injury before age 63 is still only entitled to receive incapacity benefits until they reach age 65.

### *Examples*

- Bertha has a compensable injury when she is aged 62. Her entitlement to incapacity payments will still cease at age 65, as she had not reached age 63 when she sustained the injury.
- Fergus has a compensable injury at age 64. He would be entitled to incapacity payments for a maximum of 104 weeks (whether consecutive or not).
- Maxmillian has a compensable injury when he is aged 68. He would be entitled to incapacity payments for a maximum of 104 weeks (whether consecutive or not).

## What about other benefit payments?

Any employee with a compensable disease or injury may still claim for all other benefits available under the SRC Act. These include medical treatment costs, lump sum payments for permanent impairment and death, and occupational rehabilitation costs.

For more details of these other benefits available, please refer to Comcare's booklet, *All about Workers' Compensation - a guide for employees*. (This booklet is reproduced on Comcare's website, <http://www.comcare.gov.au>).

## What other Comcare publications are affected?

The advice in the following publications should now be read in conjunction with this latest Circular:

- *Customer Circular No. 23 - Entitlement to compensation after age 65*;
- *All about workers' compensation ... a guide for employees* (page 15); and
- *Working With You*, Issue 17, July 1998 (page 6).

## Further information?

If you would like more information on any issues raised in this Circular, please contact Comcare's Operational Policy group on 1300 366 979.