



Jurisdictional Policy Advice No. 2009/7
Safety, Rehabilitation and Compensation Act 1988 (SRC Act)
Increase to death benefits – section 17
Retrospectively applicable from 13 May 2008

Purpose

1. To implement the increases to the benefits payable under section 17 of the SRC Act, “Compensation for injuries resulting in death” as a result of amendments to the SRC Act by the *Employment and Workplace Relations Amendment Act 2009*.

Background

2. The proclamation of the *Employment and Workplace Relations Amendment Act 2009*, amended the value of benefits under section 17 of the SRC Act. The amendment applies retrospectively to all compensable deaths occurring on and from 13 May 2008. Where benefits have already been paid for such deaths additional payments to dependants of the deceased employee are now payable.

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3. The benefits for dependants under section 17 of the SRC Act have been increased with effect **from 13 May 2008**. The benefits under subsections 17(3) and (4) were increased to \$400,000.00 while the benefit under subsection 17(5) was increased to \$110.00 per week.
4. These benefits were subject to a further increase **from 1 July 2008** as a consequence of section 13 of the SRC Act - see references to indexation below. The benefits under subsections 17(3) and (4) were increased to \$412,000.00 while the benefit under subsection 17(5) was increased to \$113.30 per week.
5. The following table is a summary of the amounts payable under section 17 of the SRC Act for death benefits from 1 May 2008 to 30 June 2009:

Sub-section	1 July 2007 to 12 May 2008	13 May 2008 to 30 June 2008	1 July 2008 to 30 June 2009
17(3)	\$219,023.62	\$400,000.00	\$412,000.00
17(4)	\$219,023.62	\$400,000.00	\$412,000.00
17(5)	\$72.98	\$110.00	\$113.30

6. The increases in these benefits applicable **from 1 July 2009** are addressed in Jurisdictional Policy Advice No. 2009/8 – “Indexation of benefits under section 13 & Insertion of section 13AA prescribing the Wage Price Index for section 17”.

Subsection 17(3)

7. Determining authorities are required to increase the subsection 17(3) payment made to dependants who were wholly dependant on an employee whose date of death was in the period **13 May 2008 to 30 June 2008** inclusive, to a total of \$400,000.00. This is an additional \$180,976.38, as the 2007-2008 rate was \$219,023.62.

Indexation of subsection 17(3) under section 13

8. Section 13 of the SRC Act requires indexation of benefits including those in section 17. The prescribed index to apply to these benefits is the All Groups Consumer Price Index (CPI) over the 12 month period ending 31 December immediately before the relevant 1 July. The CPI is calculated from the weighted average of the 8 capital cities, published by the Australian Statistician.
9. The movement from the quarterly index of December 2006 to the quarterly index of December 2007 was 2.96% which, when converted to a factor and rounded to 3 decimal places is **1.030**. The resultant benefit for subsection 17(3) is **\$412,000.00**.
10. Determining authorities are required to increase the subsection 17(3) payment made to dependants who were wholly dependant on an employee whose date of death was in the period **1 July 2008 to 30 June 2009** inclusive, to a total of \$412,000. This would be an additional \$186,450.09, as the 2008-2009 rate was \$225,549.91.

Disbursement of the additional amount

11. For deaths that occurred on or after 10 December 2008 please see the reference to the Same-sex amendments below.
12. Dependants are not required to lodge a new claim under section 17 as the original claim is recognised under subsection 17(9). Should a claim now be made by a dependant not covered by the original determination contact should be made with SRC Policy Section to discuss the manner in which the additional amount now payable may be distributed.
13. Where the lump sum was originally apportioned among multiple dependants who were wholly dependant on the employee with a date of death between 13 May 2008 and 30 June 2009, it is suggested that determining authorities should disburse the additional sum in the same proportions.
14. The disbursement of the additional benefit should be by way of a determination and not a reconsideration of own motion – that is to say, the original determination should remain undisturbed. Where the additional benefit is to be disbursed among 2 or more dependants the determining authority should make one determination in respect of those dependants as required by subsection 17(10).

Subsection 17(4)

15. Determining authorities are required to consider whether to increase the subsection 17(4) payment made to any dependant(s) who was (were) partly dependant on an employee whose date of death was in the period **13 May 2008 to 30 June 2008** inclusive, to a maximum of \$400,000.00. This is a maximum additional \$180,976.38, as the 2007-2008 rate was \$219,023.62.

Indexation of subsection 17(4) under section 13

16. Section 13 of the SRC Act requires indexation of benefits including those in section 17. The prescribed index to apply to these benefits is the All Groups Consumer Price Index (CPI) over the 12 month period ending 31 December immediately before the relevant 1 July. The CPI is calculated from the weighted average of the 8 capital cities, published by the Australian Statistician.
17. The movement from the quarterly index of December 2006 to the quarterly index of December 2007 was 2.96% which, when converted to a factor and rounded to 3 decimal places is **1.030**. The resultant benefit for subsection 17(4) is **\$412,000.00**.
18. Determining authorities are required to consider whether to increase the subsection 17(4) payment made to any dependant(s) who was (were) partly dependant on an employee whose date of death was in the period **1 July 2008 to 30 June 2009** inclusive, to a total of \$412,000.00. This is a maximum additional \$186,450.09, as the 2008-2009 rate was \$225,549.91.

Disbursement of the additional amount

19. For deaths that occurred on or after 10 December 2008 please see the reference to the Same-sex amendments below.
20. Dependants are not required to lodge a new claim under section 17 as the original claim is recognised under subsection 17(9). Should a claim now be made by a dependant not covered by the original determination contact should be made with SRC Policy Section to discuss the manner in which the additional amount now payable may be distributed.
21. Where the lump sum was originally apportioned among multiple dependants who were partly dependant on the employee with a date of death between 13 May 2008 and 30 June 2009 it is suggested that determining authorities apply the same considerations as were used for the original decision.
22. The disbursement of the additional benefit should be way of a determination and not a reconsideration of own motion – that is to say the original determination should remain undisturbed. Where the additional benefit is to be disbursed among 2 or more dependants the determining authority should make one determination in respect of those dependants as required by subsection 17(10).
23. If the determining authority decides that no additional amount is payable to the dependant(s) because the original benefit was based upon, for example, a specified figure rather than a percentage of the total benefit, then a determination is still required and the dependant(s) given an opportunity to seek a reconsideration of that decision.

Subsection 17(5)

24. For prescribed children who were in receipt of a subsection 17(5) benefit at anytime during the period **13 May to 30 June 2008**, irrespective of the employee's date of death, determining authorities are required to increase the weekly payment to \$110.00 per week for each week that this benefit was paid in this period. This would be an additional \$37.02 per week, as the previous 2007-2008 rate was \$72.98 per week.

Indexation of subsection 17(5) under section 13

25. Section 13 of the SRC Act requires indexation of benefits including those in section 17. The prescribed index to apply to these benefits is the All Groups Consumer Price Index (CPI) over the 12 month period ending 31 December immediately before the relevant 1 July. The CPI is calculated from the weighted average of the 8 capital cities, published by the Australian Statistician.
26. The movement from the quarterly index of December 2006 to the quarterly index of December 2007 was 2.96% which, when converted to a factor and rounded to 3 decimal places is **1.030**. The resultant benefit for subsection 17(5) is **\$113.30** per week.
27. For prescribed children who were in receipt of a subsection 17(5) benefit at anytime during the period **1 July 2008 to 30 June 2009**, determining authorities are required to increase the weekly payment to \$113.30 per week for each week that this benefit was paid or payable in this period. This would be an extra \$38.13 per week, as the existing 2008-2009 rate was \$75.17 per week.

Disbursement of the additional amount

28. As the additional weekly benefits have retrospective effect determining authorities should vary all determinations covering entitlements from 13 May 2008 to encompass the new benefit regime. This should be done way of a reconsideration of own motion under subsection 62(1) of the SRC Act.
29. For prescribed children of an employee whose death occurred on or after 10 December 2008 please see the reference to the Same-sex amendments below.

Same-sex amendments

30. Please see Jurisdictional Policy Advice No. 2009/6 – “Same-sex relationships”.
31. The *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* (Same-Sex Act) applied to the SRC Act on and from Wednesday 10 December 2008. Should an employee in a same-sex relationship have died since **10 December 2008** and benefits under subsections 17(3) or (4) have already been paid to dependants other than the same sex spouse or a child of that spouse then contact should be made with SRC Policy Section to discuss the manner in which the additional amount now payable may be distributed.
32. Furthermore, a child now considered to be a prescribed child consequent to the Same-Sex Act, is entitled to payments under subsection 17(5) on and from 10 December 2008 irrespective of the date of death.
33. For enquiries concerning this policy advice, please contact the SRC Policy Section by telephone on 1300 366 979, or by email at SRC.Policy@comcare.gov.au.

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5 June 2009