



Jurisdictional Policy Advice No. 2007/12

Safety, Rehabilitation and Compensation Act 1988

Amendments to the Act that affect the way post retirement weekly payments are calculated

Background

1. The *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* (SRCOLA) received Royal Assent on 12 April 2007.
2. This Act amends the provisions of the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act). The amendments will, among other things, restore the original intent of the SRC Act in paying a total of 70% Normal Weekly Earnings to employees in receipt of a superannuation lump sum and/or weekly pension.
3. The amendments will ensure that if the employee has an entitlement to weekly incapacity payments and receives a superannuation benefit, the adjustment to weekly compensation payments, post retirement, will be more equitable and transparent in taking that superannuation benefit into account.
4. This will be achieved by:
 - subtracting a standard 5% of the employee's normal weekly earnings from the amount of compensation, for new retirees (s20, 21 and 21A beneficiaries), and
 - subtracting a weekly interest on the lump sum amount from the amount of compensation for existing and new retirees (section 21 and 21A beneficiaries), and
 - updating the definition of *superannuation scheme* to include retirement savings accounts.
5. The following is an extract from the SRCOLA Bill Second Reading Speech, that relates to this amendment, followed by the amendment:

The Bill will amend the method for calculating retirees' incapacity benefits to take account of changes in interest rates and superannuation fund contributions since the time the Act was first introduced. The change in the interest rate provision would result in increased benefits payable to retirees. Amending the notional superannuation deduction would restore the original policy intent by providing for benefits to affected retirees to be set at 70 per cent of pre-injury normal weekly earnings.

Subsection 4(1)

Insert:

retirement savings account means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997*.

Subsection 4(1) (definition of *superannuation scheme*)

After “superannuation scheme under which”, insert “, or retirement savings account to which,”.

Subsection 20(1)

Repeal the subsection, substitute:

- (1) Compensation payable to an employee who is incapacitated for work as a result of an injury is determined in accordance with this section if:
 - (a) the employee is retired from his or her employment (whether the employee retired voluntarily or was compulsorily retired); and
 - (b) the employee receives a pension under a superannuation scheme as a result of the employee’s retirement.

Subsection 20(3)

Repeal the subsection, substitute:

- (3) The amount of compensation is the amount worked out using this formula:

$$\text{Amount of compensation} - \left(\text{Superannuation amount} + \text{5\% of the employee's normal weekly earnings} \right)$$

where:

amount of compensation means the amount of compensation that would have been payable to the employee for a week if:

- (a) section 19, other than subsection 19(6), had applied to the employee; and
 - (b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the week were a week referred to in subsection 19(3).
- (4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use “SC” instead of “5% of the employee’s normal weekly earnings”. For this purpose:

SC means the amount of superannuation contributions that the employee would have been required to pay in that week if he or she were still contributing to the superannuation scheme.

Subsection 21(1)

Repeal the subsection, substitute:

- (1) Compensation payable to an employee who is incapacitated for work as a result of an injury is determined in accordance with this section if:
 - (a) the employee is retired from his or her employment (whether the employee retired voluntarily or was compulsorily retired); and
 - (b) the employee receives a lump sum benefit under a superannuation scheme as a result of the employee’s retirement.

Subsection 21(3)

Repeal the subsection, substitute:

- (3) The amount of compensation is the amount worked out using this formula:

$$\text{Amount of compensation} - \left(\text{Weekly interest on the lump sum} + \text{5\% of the employee's normal weekly earnings} \right)$$

where:

amount of compensation means the amount of compensation that would have been payable to the employee for a week if:

- (a) section 19, other than subsection 19(6), had applied to the employee; and
- (b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the week were a week referred to in subsection 19(3).

weekly interest on the lump sum means the amount worked out by:

- (a) multiplying the superannuation amount in relation to the lump sum benefit received by the employee by the rate specified in an instrument made under subsection (5); and
- (b) dividing the result of paragraph (a) by 52.

- (4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use “SC” instead of “5% of the employee’s normal weekly earnings”. For this purpose:

SC means the amount of superannuation contributions that the employee would have been required to pay in that week if he or she were still contributing to the superannuation scheme.

- (5) For the purposes of the definition of **weekly interest on the lump sum** in subsection (3) of this section and subsection 21A(3), the Minister may, by legislative instrument, specify a rate that applies for the period of 12 months commencing on 1 July in any year.

Subsection 21A(3)

Repeal the subsection, substitute:

- (3) The amount of compensation is the amount worked out using this formula:

$$\text{Amount of compensation} - \left(\text{Superannuation amount in relation to the pension} + \text{Weekly interest on the lump sum} + \text{5\% of the employee's normal weekly earnings} \right)$$

where:

amount of compensation means the amount of compensation that would have been payable to the employee for the relevant week if:

- (a) section 19, other than subsection 19(6), had applied to the employee; and
- (b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the relevant week were a week referred to in subsection 19(3).

superannuation amount in relation to the pension means the superannuation amount in relation to the pension received by the employee in respect of the relevant week.

weekly interest on the lump sum means the amount worked out by:

- (a) multiplying the superannuation amount in relation to the lump sum benefit received by the employee by the rate specified in an instrument made under subsection 21(5); and
- (b) dividing the result of paragraph (a) by 52.

Subsection 21A(4)

Repeal the subsection, substitute:

- (4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use “SC” instead of “5% of the employee’s normal weekly earnings”. For this purpose:

SC means the amount of superannuation contributions that the employee would have been required to pay in that week if he or she were still contributing to the superannuation scheme.

Summary of changes

6. These items repeal the relevant subsections and substitute, for the purposes of this advice, new subsections 20(1), 20(3), 20(4), 21(1), 21(3), 21(4), 21(5), 21A(1), 21A(3) and 21A(4).
7. One substantive change that applies to all the formulas is that a set *5% of the employee’s normal weekly earnings* is to be subtracted from the employee’s *amount of compensation*. This restores the original policy intention of the Act whereby eligible retired employees are to receive a combined workers’ compensation and superannuation weekly benefit of no more than 70% of normal weekly earnings. However, this does not apply to employees who retired before this amendment came into effect (on and from 27 April 2007), that is, for these retirees, their notional superannuation contribution rate will remain as the amount to be deducted from their compensation payable.
8. The other substantive change to the formulas, which applies to subsections 21(3) and 21A(3) is that, *a weekly interest on the lump sum* amount is subtracted from the employee’s *amount of compensation*, with the working out of this weekly interest amount set out in these subsections and the rate of interest being specified by legislative instrument as outlined in subsection 21(5).
9. Under subsection 21(5), the Minister for Employment and Workplace Relations would issue an instrument each year (to apply from 1 July) setting an interest rate to be applied to the employee’s lump sum for the following 12 months. This would allow this interest rate to be adjusted to market interest rates, currently based on the average of the previous year’s 10-year Government bond rate, on a yearly basis.
10. This new provision will apply to both new retirees *and to* existing retirees on and from 27 April 2007. A Jurisdictional Policy Advice 2007/13 has been issued specifying the transitional interest rate from this date, as well as the first 12 months interest rate from 1 July 2007 to 30 June 2008. The annual interest rate applicable under sub section 21(5) will be advised to determining authorities prior to 30 June each year.

11. Another change in these subsections allows for the application of these formulas to an employee who was not actually incapacitated on the date of retirement. An inadvertent effect of the repealed subsections was that an employee who was not actually incapacitated for work on the date of retirement could not have these formulas applied to their weekly payment of compensation, if they became entitled to incapacity benefits at some later date.

Summary by subsection

12. **Subsection 20(3)** sets out the formula to be used in calculating the *amount of compensation* payable to an employee who is retired (or will retire) and received (or will receive) a weekly superannuation benefit. The formula provides that the weekly *amount of compensation* payable in accordance with section 19 is reduced by the combined weekly *superannuation amount* and *5% of the employee's normal weekly earnings*. However, if the employee retired before this amended section commences (27 April 2007), **subsection 20(4)** stipulates that the existing 'SC' amount continues to apply instead of the 5% amount.
13. **Subsection 21(3)** sets out the formula to be used in calculating the *amount of compensation* payable to an employee who is retired (or will retire) and received (or will receive) a lump sum superannuation benefit. The formula provides that the weekly *amount of compensation* payable in accordance with section 19 is reduced by the combined *weekly interest on the lump sum* (a deemed weekly benefit derived from the superannuation lump sum) and *5% of the employee's normal weekly earnings*. However, if the employee retired before the section commenced, **subsection 21(4)** stipulates that the existing 'SC' amount continues to apply instead of the 5% amount.
14. **Subsection 21A(3)** sets out the formula to be used in calculating the *amount of compensation* payable to an employee who is retired (or will retire), receives (or will receive) a weekly superannuation benefit and received (or will receive) a lump sum superannuation benefit. The formula provides that the weekly *amount of compensation* payable in accordance with section 19 is reduced by the combined *weekly interest on the lump sum*, the *weekly superannuation amount* and *5% of the employee's normal weekly earnings*. However, if the employee retired before the section commenced, **subsection 21A(4)** stipulates that the existing 'SC' amount continues to apply instead of the 5% amount.
15. Subsection 4(1) now defines *retirement savings account* and amends the definition of *superannuation scheme* such that the employer financed contributions to a retirement savings account are now able to be treated the same as those contributions to a superannuation scheme. However, this applies only to new retirees from the date of effect of the amendment.

Policy Advice

16. Determining authorities are to incorporate suitable processes and procedures to ensure that these amendments are applied correctly to new claims for weekly payments.
17. This advice is to be applied from the applicable dates.
18. Any issues relevant to this policy advice may be discussed with Alex Brown on (02) 6275 0308.

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