



Australian Government

Comcare

Customer Circular

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CHANGES TO WORKERS' COMPENSATION LEGISLATION

EFFECTIVE ON AND FROM 13 APRIL 2007

1. PURPOSE

The purpose of this Circular is to provide advice on changes to the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) which took effect on and from 13 April 2007.

2. BACKGROUND

On 12 April 2007 the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* (SRCOLA Act) received Royal Assent.

The SRCOLA Act amends the SRC Act in a number of areas including the definition of disease and injury, remove coverage for non work-related journeys and recess breaks and to increase the maximum funeral benefit payable.

This Circular provides advice on changes to:

- the definition of 'disease' to strengthen the connection between the disease and the employee's employment;
- the definition of 'injury' to exclude injuries arising from reasonable administrative action taken in a reasonable manner;
- remove claims for non work-related journeys and recess breaks where the employer has no control over the activities of the employee;
- the calculation of retirees' incapacity benefits to take account of changes in interest rates and superannuation fund contributions;
- update measures for calculating benefits for employees, including the definitions of 'normal weekly earnings' and 'superannuation scheme';

- ensure that all potential earnings from suitable employment can be taken into account when determining incapacity payments;
- enable determining authorities to directly reimburse health care providers for the cost of their services to injured employees ; and
- increase the maximum funeral benefits payable.

3. DEFINITION OF 'DISEASE' AND THE CONNECTION BETWEEN THE DISEASE AND THE EMPLOYEE'S EMPLOYMENT

Previous provisions

Section 4 provided a definition of 'disease' which required that employment contributed in a material degree to the contraction of a disease.

Amendment

The definition of 'disease' is repealed and a new definition appears in the new section 5B. New subsection 5B(1) defines 'disease' to mean an ailment suffered by an employee, or an aggravation of such an ailment, that was contributed to, to a *significant degree*, by the employee's employment by the Commonwealth or a licensee. New subsection 5B(3) then defines *significant degree* to mean a degree that is substantially more than material. The matters to be taken into account when considering significant are contained in subsection 5B(2).

Date of effect

Day after Royal assent/new injuries only.

4. DEFINITION OF 'INJURY' AND THE CONNECTION BETWEEN THE INJURY AND THE EMPLOYEE'S EMPLOYMENT

Previous provisions

Section 4 provided a definition of 'injury' which included a number of exclusionary provisions.

Amendment

The definition of 'injury' is repealed and a new definition appears in the new section 5A.

The new definition retains all the elements of the existing definition of 'injury' but extends the exclusionary provisions.

New sub section 5A(1) provides that a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment is excluded from the definition of *injury*. Examples of matters which constitute 'reasonable administrative action' are provided in subsection 5A(2).

Date of effect

Day after Royal Assent/new injuries only.

5. JOURNEY AND RECESS CLAIMS

Previous provisions

The provisions of section 6 in relation to whether an injury arose out of or in the course of employment, included coverage for journey and recess claims.

Amendment

The amendments provide that injuries suffered while an employee was temporarily absent from the workplace during an ordinary recess in employment will generally not be compensable.

New paragraph 6(1)(d) provides that the SRC Act will apply to injuries that occur while the employee was travelling, at the request or direction of the employer, for the purposes of the employment.

New subsection 6(1C) makes it clear that normal travel between an employee's residence and usual place of work is not taken at the direction or request of the employer and is therefore not compensable.

Workers' compensation will continue to be payable in respect of injuries arising from circumstances where an employer is able to take reasonably practicable

steps to protect an employee, e.g. when the employee remains at the workplace during a recess or is temporarily absent from the workplace undertaking an activity 'associated with employment' or at the direction or request of the employer.

Date of effect

Day after Royal Assent/new injuries only.

6. INCREASE TO FUNERAL EXPENSES

Previous provisions

Section 18 provided for an amount of compensation to be paid for funeral expenses. That amount was \$4,894.39.

Amendment

The new subsection 18(4) increases the maximum lump sum amount of compensation for a funeral to \$9,000 (to be indexed in accordance with section 13). In addition, new paragraph 18(4)(b) enables the maximum amount of benefit to be increased by regulation should the indexation adjustments not keep pace with real costs.

Date of effect

Day after Royal Assent/new claims where date of death is after Royal Assent.

7. SUITABLE EMPLOYMENT

Previous provisions

The definition of suitable employment was limited in the case of employees whose employment by the Commonwealth was terminated (ie – employees who did not *voluntarily* leave Commonwealth employment).

Amendment

The definition of suitable employment in subsection 4(1) is amended to allow consideration of an employee's capacity to work outside Commonwealth employment (or employment by a licensed corporation) when calculating their weekly incapacity payments under section 19 of the SRC Act - regardless of the circumstances of their separation from employment.

Date of effect

Day after Royal Assent/new and existing claims.

8. DEFINITION OF SUPERANNUATION SCHEME

Previous provisions

A superannuation scheme was defined as a scheme to which the Commonwealth made contributions.

Amendment

The definition of superannuation scheme is amended to include retirement savings account. The relevant retirement savings account has to be one to which the employer also made contributions, as it is only the employer's contributions that are taken into account for the purposes of sections 20, 21 and 21A.

Date of effect

Day after Royal Assent/first determinations of sections 20, 21, 21A only.

9. INCAPACITY BENEFIT FOR RETIREES IN RECEIPT OF SUPERANNUATION

Note that these amendments do not take effect on the day after Royal Assent, but instead take effect on 27 April 2007.

Previous provisions

The previous provisions of sections 20, 21 and 21A applied a notional superannuation contribution of an amount equal to the contributions an employee would have been required to pay if they had continued to be employed. This meant that the amount varied depending on the scheme the employee was in e.g. 5% for CSS, 2% for PSS and nil in some cases where an employee contribution was not required.

The previous provisions of sections 21 and 21A also applied a formula to convert a lump sum superannuation benefit to a weekly amount which investment of the lump sum and a return of 10% per annum on that investment.

Amendment (A)

The new formulae set a notional superannuation contribution of 5% of the employee's normal weekly earnings (NWE). This has the effect of restoring the original policy intention of the Act to set a standard compensation payment at 70% of normal weekly earnings (NWE) for claimants who are no longer working and to whom sections 20, 21 and 21A apply.

For claimants who are working, the percentage of NWE they are entitled to is also reduced by a notional superannuation contribution of 5%.

Notwithstanding the change to the formulae, new subsections 20(4), 21(4) and 21A(4) have the effect of continuing to apply the notional superannuation contribution rate as the amount to be deducted from the compensation payable, for those employees who retired before the new formulas commenced.

Date of effect (A)

27 April 2007/new retirees only

Amendment (B)

The other substantive change to the formulae, which applies only to subsections 21(3) and 21(4) is that the interest rate applying to lump sums will be that set under the new subsection 21(5) and be set equivalent to market rates.

Date of effect (B)

Following the Minister's declaration of applicable rate/new and existing claims.

10. REIMBURSEMENT OF MEDICAL EXPENSES

Previous provisions

Paragraph 16 (4)(a) provided for medical expenses to be paid in accordance with the directions of the employee. This meant that administratively when an employee paid the account they were reimbursed and if the provider sent an account the provider was paid directly.

Amendment

The amended section 16 specifies that where a medical account is payable under this section, if the employee has paid the account, reimbursement of the cost of the medical treatment will be at the direction of the employee, which may be to the employee – [amended paragraph 16(4)(a)]; and if payment for the medical treatment has not been met, then Comcare may make the payment direct to the person to whom the cost is payable, without needing to seek a direction from the employee – [amended paragraph 16(4)(c)].

Date of effect

Day after Royal Assent – for any claim.

11. UPDATE TO NWE

Previous provisions

Some classes of employees on long term incapacity payments, for a number of reasons, did not have effective access to increases in their NWE.

Amendment

New subsections 8(9E), 8(9F) and 8(9G) provide for a current employee's NWE to be updated by reference to a prescribed index, where the NWE cannot otherwise be updated under the existing provisions of section 8.

Date of effect

Day after Royal Assent/new claims and existing claims from 1 July following commencement, then annually.

12. SUPERANNUATION

Previous provisions

The provisions of sections 20, 21 & 21A had been interpreted in the Courts to only apply to employees who were incapacitated at the time of their retirement.

Amendment

The new subsections make clear that irrespective of the actual date of retirement, if the employee has an entitlement to weekly incapacity payments and also has a superannuation entitlement, then the weekly compensation payments are to be adjusted in accordance with the remainder of the relevant section.

Date of effect

Day after Royal Assent/new retirees only

13. REHABILITATION

Previous provisions

Section 37 provided that a rehabilitation authority (employer) may arrange for an employee to undertake a rehabilitation program but only with an approved program provider.

Amendment

The new subsection 37(1) provides that a rehabilitation authority may make a determination that an injured employee should undertake a rehabilitation program.

New subsection 37(2) provides that, if the rehabilitation authority has made a determination under subsection 37(1), the rehabilitation authority may provide the rehabilitation program itself, or make arrangements with a Comcare approved rehabilitation provider to provide the program.

Date of effect

Day after Royal Assent

14. IMPACT OF AMENDMENTS UPON INFORMATION IN EXISTING CUSTOMER CIRCULARS

The following Customer Circulars will continue to be available for historical purposes, but should be read in conjunction with this Customer Circular to ensure the advice that you are relying upon is current:

Customer Circular No. 5
Amendments to Journey Provisions

Customer Circular No. 26
Superannuation and Compensation under the SRC Act

15. ADVICE TO CLAIMANTS

Comcare will be contacting claimants whose entitlement to compensation may be affected by any of these amendments to the SRC Act.

16. FURTHER INFORMATION

If you would like more information on any of these changes, please contact your Comcare Customer Services Manager on 1300 366 979.