



Jurisdictional Policy Advice No. 2007/08
Safety, Rehabilitation and Compensation Act 1988
Amendments to section 6: travel and recess provisions of the Act

Background

1. The *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* 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, remove coverage for injuries sustained during non work related **journeys** and **recess** breaks where the employer lacks control over the activities of the employee.
3. In introducing these amendments, the Minister for Employment and Workplace Relations, in his Second Reading Speech, made clear it was the intention of the Government to strengthen the connection between the employee's employment and the employee's eligibility for workers' compensation under the scheme.
4. The following is an extract from the Second Reading Speech:

“In its March 2004 report on National Workers Compensation and Occupational Health and Safety Frameworks, the Productivity Commission recommended that coverage for journeys to and from work not be provided and for recess breaks and work related events should be restricted to those at workplaces and at employer sanctioned events.

. . . . Consistent with the Productivity Commission's approach, the SRC Act will be amended to remove coverage for injuries sustained by employees during journeys between home and work and during recess breaks undertaken away from the employer's premises, for example lunch breaks during which an employee leaves the employer's premises to go shopping.”

5. The following is the amended section **6 Injury arising out of or in the course of employment**, where the amended parts have been highlighted in blue.

6 Injury arising out of or in the course of employment

- (1) Without limiting the circumstances in which an injury to an employee may be treated as having arisen out of, or in the course of, his or her employment, an injury shall, for the purposes of this Act, be treated as having so arisen if it was sustained:
- (a) as a result of an act of violence that would not have occurred but for the employee's employment or the performance by the employee of the duties or functions of his or her employment; or
 - (b) while the employee was at the employee's place of work, including during an ordinary recess, for the purposes of that employment; or
 - (c) while the employee was **temporarily absent** from the employee's place of work **undertaking an activity**:
 - (i) **associated** with the employee's employment; or
 - (ii) at the **direction or request** of the Commonwealth or a licensee; or
 - (d) while the employee was, at the direction or request of the Commonwealth or a licensee, travelling for the purpose of that employment; or
 - (e) while the employee was at a place of education, except while on leave without pay, in accordance with:
 - (i) a condition of the employee's employment by the Commonwealth or a licensee; or
 - (ii) a request or direction of the Commonwealth or a licensee; or
 - (iii) the approval of the Commonwealth or a licensee; or
 - (ea) while the employee was travelling between the employee's place of work and a place of education for the purpose of attending that place in accordance with:
 - (i) a condition of the employee's employment by the Commonwealth or a licensee; or
 - (ii) a request or direction of the Commonwealth or licensee; or
 - (iii) the approval of the Commonwealth or a licensee; or
 - (f) while the employee was at a place for the purpose of:
 - (i) obtaining a medical certificate for the purposes of this Act; or
 - (ii) receiving medical treatment for an injury; or
 - (iii) undergoing a rehabilitation program provided under this Act; or
 - (iv) receiving a payment of compensation under this Act; or
 - (v) undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under this Act; or
 - (vi) receiving money due to the employee under the terms of his or her employment, being money that, under the terms of that employment or any agreement or arrangement between the employee and the Commonwealth or a licensee, is available, or reasonably expected by the employee to be available, for collection at that place; or
 - (g) while the employee was travelling between the employee's place of work and another place for the purpose of:
 - (i) obtaining a medical certificate for the purposes of this Act; or
 - (ii) receiving medical treatment for an injury; or
 - (iii) undergoing a rehabilitation program provided under this Act; or
 - (iv) undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under this Act.
- (1A) For the purposes of this section:
- (a) a journey from a place of residence is taken to start at the boundary of the land where the place of residence is situated; or
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- (b) a journey to such a place of residence is taken to end at that boundary.
- (1B) If an employee owns or occupies a parcel of land contiguous with the land on which the employee's residence is situated, the boundary referred to in subsection (1A) is the external boundary of all of the contiguous parcels of land if treated as a single parcel.
- (1C) For the purposes of paragraph (1)(d), travel between the employee's residence and the employee's usual place of work is taken not to be at the direction or request of the Commonwealth or a licensee.
- (2) In paragraph (1)(d), the reference to the employee travelling does not include a reference to travelling to or from a place mentioned in paragraph (1)(e) or (f).
- (3) Subsection (1) does not apply where an employee sustains an injury:
 - (a) while at a place referred to in that subsection; or
 - (b) during an ordinary recess in his or her employment;if the employee sustained the injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury.

Interpretation

6. **Journeys** - The effect of the amendments is to remove from SRC Act coverage, normal every day 'commuting' to and from the workplace - those journeys between residence and 'usual place of employment'. However, the amended section clearly retains coverage for those journeys at the direction or request of the employer - such as on an approved or directed journey from home to a place other than the usual workplace, from home to a task or work appointment outside of the employee's usual place of work as well as returns home from such situations. Journeys from home to the airport and onwards to attend an interstate meeting, journeys directly from home to a local meeting - as well as the return to home from such places, would clearly be situations which would still be covered.
7. The new subsection (1C) makes it clear that travel between the employee's *usual* place of work and residence would not be considered to be at the direction or request of the employer. In practical terms, this would exclude a travel claim in a situation where an 'on-call' employee was requested to attend the usual place of work out of hours. It would exclude coverage of travel claims from an employee with home based computing facilities who claimed that they were travelling between work and 'another place of work'. It would also exclude claims from employees who drive work supplied cars or maintained cars on a journey between home and the employee's usual place of work.
8. On a case by case basis, there may be situations which attract coverage, such as where an employee is required to effectively suspend or to interrupt his or her journey to home, or to suspend his or her ordinary recess, and to resume employment.
9. Sub-paragraphs (ea) and (g) specify that coverage includes travelling *between work* and a place of education and work and places where a medical certificate is obtained, receiving medical treatment or rehabilitation etc in connection with the SRC Act. However, travel to such places from home or travel from such places to home is not covered.

10. **Recess breaks** - This amendment restricts coverage for recess claims if the activity is outside the employer's control. The amendments do not affect injuries incurred by an employee during an ordinary recess at the workplace or injuries incurred by an employee while the employee is temporarily absent from his or her workplace undertaking an activity associated with the employment or at the direction or request of the employer.
11. Coverage for employees who are 'temporarily absent from the employee's workplace undertaking an activity associated with the employment' will have to be decided on a case by case basis, particularly in relation to consideration of 'an activity associated with the employment'. Most of these situations would concern lunch time activities such as participation in social, sporting and health and well-being activities which may or may not be 'associated with employment'. The legislative intent from the Second Reading Speech would indicate that 'employer sanctioned events' would be covered. Employer sanctioned events would include activities such as the official staff Christmas party, employer organised sporting or health promotion events. However, meeting the 'associated with employment' would not necessarily be restricted to such 'employer sanctioned events' and could also include employer supported events, depending on the degree to which the event or activity could be considered to be 'associated with employment'.

Decision making

12. In considering those activities which might constitute 'undertaking an activity associated with the employment', the decision maker should consider the facts as presented by the employer.
13. In considering what would constitute the 'workplace', the decision maker should be guided by the sub section 4(1) definition of *place of work* as 'any place at which the employee is required to attend for the purpose of carrying out the duties of his or her employment'. While this could be generally characterised as a place where the employer has health and safety obligations and an element of control over the activities of the employee, it may not necessarily mean a building or a discrete area, as some employees have duties that entail constant outdoor activities and travel.

Policy Advice

14. Determining authorities are to incorporate suitable processes and procedures to ensure that these amendments are applied correctly to new claims for compensation.
15. This advice is to be applied to claims with a date of injury from the day following the date of Royal Assent to the Act, that is **13 April 2007**.
16. Any issues relevant to this policy advice may be discussed with Alex Brown on (02) 6275 0308.

Steve Kibble

General Manager, Research and Policy Branch

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