



Payment of weekly incapacity compensation to employees

Purpose

1. The purpose of this Customer Circular is to advise of amendments to the *Safety, Rehabilitation and Compensation Act 1988* (“the SRC Act”).
2. The SRC Act has been amended to allow a seamless transition for employees between the payment of salary (including paid leave) and the payment of workers’ compensation.
3. These arrangements in some cases replace, and in other cases enhance the procedure put in place by **Customer Circular Issue 50** released in April 2005. For injuries occurring:
 - before 1 July 2006, where liability has not been yet accepted for the claim, **Customer Circular 50** sets out the appropriate procedure.
 - before 1 July 2006, where liability has been accepted for the claim, this Customer Circular (paragraphs 14-17) sets out the appropriate procedure.
 - on and from 1 July 2006, these arrangements replace the procedure put in place by **Customer Circular 50**.

Revised operational arrangements

4. From 1 July 2006, the SRC Act clarifies the payment arrangements applicable to workers’ compensation benefits payable to employees by Comcare.

5. Under the SRC Act, Comcare has the obligation to pay workers’ compensation benefits to an entitled employee. However, in practice, where there is an ongoing employer-employee relationship, it is generally more efficient for Comcare to make a payment to an employer and for the employer to make payments to an employee.

6. The amendments to the SRC Act allow Comcare to make compensation payments to employees through their employer. Further, the amendments allow employers to make the necessary adjustments where salary, etc has been paid by the employer prior to a determination by Comcare and Comcare is required to pay compensation in respect of the same period.

Revised financial arrangements

7. Revised appropriation arrangements for agencies subject to the *Financial Management and Accountability Act 1997* have been considered by the Department of Finance and Administration. For further information in relation to appropriation arrangements, please refer to **Finance Circular 2006/10** and the Finance Minister’s Orders (FMOs), which provide guidance for the treatment of Comcare payments.

Amendments to the SRC Act

8. The SRC Act has been amended by the *Financial Framework Legislation Amendment Act (No. 1) 2006* (“the FFLA Act”). In effect, the FFLA Act makes the following amendments:

- Definitions for the terms “pre-determination period” and “public money” have been inserted into section 4 of the SRC Act;
- A new section 23A has been inserted to require the repayment of salary, wages or pay and the re-crediting of paid leave where an employee takes paid leave and a claim for compensation is successful for the same period;
- New sections 112A and 112B have been inserted to allow Comcare to pay compensation to an employee through their employer; and
- Section 116 has been amended to provide that leave (other than paid maternity leave) can not be granted in the post-determination period, i.e after the determination for initial liability has been made.

9. These amendments apply from 1 July 2006 and allow Comcare to pay compensation to an employee through their employer in most circumstances. The amendments will apply as outlined in the three circumstances discussed below.

Claims for Compensation with a Date of Injury on and from 1 July 2006

10. Where Comcare receives a claim for compensation with a date of injury on and from 1 July 2006, section 116 of the SRC Act allows an employee to access paid leave, pending determination of the claim. Section 23A then provides that where the employee takes time off work because of the injury for which they have claimed compensation and a determination is made by Comcare accepting liability, the employee must repay the amount of paid leave to the Commonwealth.

11. Sections 112A and 112B allow Comcare to make compensation payments to the employer and Comcare must advise the employer of its intention to do so.

12. Under section 23A the employer will then set off the amount of compensation against the paid leave taken by the employee and re-credit the employee’s leave. Any excess compensation must then be paid to the employee.

Existing Liabilities

13. Where Comcare has previously accepted liability for an injury, sections 112A and 112B also allow Comcare to make compensation payments to the employee through the employer in relation to existing claims.

Claims for Compensation After 1 July 2006 where the Date of Injury is Before 1 July 2006

14. Where Comcare receives a claim for compensation after 1 July 2006 with a date of injury before 1 July 2006 different procedures will apply.

15. Section 23A only applies to claims with a date of injury on and from 1 July 2006. Accordingly, the employer must obtain an authority from the employee to enable the set off of paid leave that the employer grants to the employee while waiting for a determination from Comcare. See **Customer Circular Issue 50** for further information on the authority.

16. If liability is accepted, sections 112A and 112B allow Comcare to pay compensation to the employee through the employer.

17. Please see Customer Circular 50 for further information in relation to compensation payments on claims for injuries occurring prior to 1 July 2006.

Questions

18. If you have any questions regarding this matter please contact your Comcare Customer Manager on 1300 366 979.