



# Customer Circular

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## Payment of lump sums for permanent impairment, in cases where the date of injury is prior to 1 December 1988 – follow-up to Customer Circular No. 8

### Purpose

The purpose of this Circular is to provide you with an outline of Comcare's procedure for dealing with claims for permanent impairment where the date of injury is prior to 1 December 1988. Sections 24, 25, 27 & 124 of the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) refer.

This Circular should be read in conjunction with Customer Circular No. 8, (CC No. 8) issued in March 1997.

### Background

In CC No. 8, Comcare advised that it had decided to defer consideration of all transitional impairment claims until the matter had been clarified by the Federal Court. The Full Federal Court in the case of *Comcare v Bozicevic* handed down its decision earlier this year. The Court held:

1. that claimants who had claimed for an impairment which was permanent prior to 1 December 1988 were not required to meet the 10% whole person impairment threshold under the SRC Act; and
2. that claimants who had received payment for an impairment would also be able to receive a payment for non-economic loss, even though this provision was not available under the *Compensation (Commonwealth Government Employees) Act 1971* (the 1971 Act).

### Policy

Comcare will apply the following policy. All transitional impairments:

- which were permanent prior to 1 December 1988;
- which satisfy the requirements of any section from 39 to 42 of the 1971 Act;
- which have not yet been paid; and
- irrespective of whether they are 10% or less whole person impairment,

will now be calculated in accordance with the requirements of section 124 of the SRC Act.

### Calculation of the permanent impairment

Comcare will arrange for a medical examination of the claimant which will include an assessment of the impairment under the applicable provisions of sections 39 to 42 of the 1971 Act.

In most cases the impairment will be assessed as at 30 November 1988 and so payment will be determined according to the schedule in force at that time.

It should be noted, however, that as a result of the operation of section 124 of the SRC Act, subsection 39 (14) of the 1971 still applies. This means that where there is evidence to indicate that the compensable injury has resulted in, or is likely to result in, the claimant becoming *totally* incapacitated for employment, a lump sum under section 39 of the 1971 Act cannot be paid for impairment.

### Calculation of non-economic Loss

As part of the examination referred to previously, Comcare will also include an assessment to establish the non-economic loss amount payable under section 27 of the SRC Act.

### Claims for subsequent impairment

If a claimant returns, at a later date, with a further deterioration *in the same impairment*, he/she may be entitled to a further payment. It will not be necessary for the claimant to establish an increase in the impairment of 10% or more. For further information on this please contact your Claims Manager.

### Claims for non-economic loss where a permanent impairment has already been paid

It is possible that claimants for transitional permanent impairment benefits who have already received payments under section 24 may now be entitled to a benefit under section 27 of the SRC Act. For further information please contact your Claims Manager, or the National Claims Help Line on 1800 150 555 (freecall).

**Previous Customer Circulars issued are:**

- CC1 Revised claim for rehabilitation & compensation
- CC2 Workers' compensation issues arising from agency restructures
- CC3 Return to work - agency responsibilities
- CC4 Cheque reimbursements for incapacity payments
- CC5 Amendments to journey provisions
- CC6 Working with rehabilitation providers
- CC7 Taxation payable on lump sum redemptions
- CC8 Payment for lump sums for permanent impairment, in cases where the date of injury is prior to 1 December 1988
- CC9 Third Party Recovery & Revised Claims Management Procedures
- CC10 Compensation for household services: section 29 of the SRC Act
- CC11 Compensation for attendant care services: section 29 of the SRC Act
- CC12 How Comcare determines claims for time off work for medical treatment & medical examinations
- CC13 Compensation payable in respect of certain alterations, modifications & aids or appliances: section 39 of the SRC Act
- CC14 Payment of Travel Costs under section 37 of the SRC Act
- CC15 Payment of Training Costs under section 37 of the SRC Act

Copies of these Customer Circulars have been distributed nationally to Human Resource Managers and Case Managers.

For more information please contact the National Business Manager, State Account Manager, or Claims Manager in your local Comcare Office. Contact details are listed below:

<b>NSW</b>	(02) 9550 8777
<b>VIC</b>	(03) 9652 3555
<b>QLD</b>	(07) 3233 1311
<b>WA</b>	(08) 9480 1444
<b>SA/NT</b>	(08) 8224 1600
<b>TAS</b>	(03) 6223 1366
<b>ACT</b>	(02) 6276 0333

**Stress Claims Management Centre**

(02) 6276 0365

**National Claims Help Line**

1800 150 555

**OHS Hotline**

1800 642 770

## Comcare Internet Site

If you would like more information on workers' compensation, rehabilitation or occupational health and safety, in the Commonwealth, please visit our Internet site at:

<http://www.comcare.gov.au>