



COMPENSATION FOR ATTENDANT CARE SERVICES

The purpose is to provide scheme guidance to relevant authorities¹ and their claims managers about the provision of attendant care services under subsection 29(3) of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

BACKGROUND

- > Once a claim for injury is accepted, a relevant authority may be liable to pay compensation for attendant care services under subsection 29(3) of the SRC Act.
- > There are two statutory considerations that must be satisfied:
 1. The claimed service must be attendant care,² and
 2. It must be reasonably required as a result of the employee's injury.
- > This scheme guidance clarifies the meaning of attendant care services to assist claims managers when considering whether they are reasonably required because of the employee's injury.
- > The SRC Act does not provide for the accreditation of attendant care providers. Providers of attendant care services are currently determined on a case-by-case basis. Comcare recommends the provision of attendant care services by reference to nationally accredited attendant care service providers.

Relevant case law

- > Court decisions have provided guidance about the meaning of attendant care and the matters that claims managers may take into account when considering whether an employee reasonably requires attendant care services. The key findings are:
 - Services are within the definition only if they are required for the essential and regular personal care of the employee. The expression 'personal care' provides for the basic needs of an employee, which must be met if the employee is to function adequately within the limits of his or her physical ability and mental capacity.³
 - Attendant care services are not normally payable when provided by a relative.⁴ However, each case will turn on its merits and payments may be made to a relative in exceptional circumstances where the attendant care services are far and above what is reasonably expected to be provided by a relative.⁵

¹ Relevant authority is defined in subsection 4(1) of the SRC Act. It is defined as either a licensee (in relation to an employee who is employed by a licensee) or Comcare (in relation to any other employee).

² Attendant care services are defined in subsection 4(1) of the SRC Act. It is defined as services that are required for the essential and regular personal care of the employee. It does not include household services, medical or surgical services, or nursing care.

³ Re Haberfield and Department of Veterans' Affairs (2002) FCA 1579 (19 December 2002).

⁴ Re VXJ and Comcare (1990) AATA 109 (4 May 1990).

⁵ Re Torney and Telstra Corporation Limited (1994) AATA 163 (9 June 1994).

GUIDANCE

Attendant care services

- > An attendant care service under the SRC Act is limited to services that provide for the essential and personal care of the employee.
- > Personal care provides for an employee's basic needs so they can adequately function within the limits of their physical ability and mental capacity.
- > Attendant care services may be provided for a distinct period (post-acute care) or for the life of a claim (ongoing care). Post-acute care is the care that may be required in the immediate period following an injury or surgical intervention. Ongoing care is the care that may be required for employees who have a severe or catastrophic injury and reasonably require ongoing personal care throughout the life of their claim.
- > Attendant care services assist and support an employee undertake activities of daily living and may include the following:
 - bathing and toileting
 - grooming
 - eating and drinking
 - use and application of artificial aids and appliances
 - home based exercise programs to achieve or improve mobility and stability
 - taking medication, and
 - attending to other essential and regular personal care needs.
- > Attendant care services do not include household, medical, surgical and nursing care services. Claims for household services should be considered under subsection 29(1) of the SRC Act and medical, surgical and nursing care services under subsection 16(1) of the SRC Act.
- > Not all personal services will fall within the meaning of attendant care. The qualifying words in the definition make it clear that the services must be required for the **essential and regular personal care** of the employee (our emphasis).
- > Attendant care services would generally not provide for typing,⁶ pedicures, manicures and hairdressing services. These types of activities are not provided by an attendant carer and are unlikely to be considered essential, or reasonably required because of the employee's injury.
- > Attendant care services do not provide for expenses incurred by an employee for the incidental travel, accommodation and meal costs of an attendant carer. They are expenses provided for another person (the carer) and are not required for the essential and regular personal care of the employee.⁷ Where an employee experiences a severely incapacitating injury, the rehabilitation authority⁸ may consider this type of expenditure under section 37 of the SRC Act.

⁶ Re Trevarthen and Comcare (1997) AATA 231 (3 July 1997).

⁷ Re Wilby and Comcare (2003) AATA 651 (11 July 2003).

⁸ Rehabilitation authority is defined in subsection 4(1) of the SRC Act. It is defined as either a licensee (in relation to an employee who is employed by a licensee) or the premium payer employer (in relation to any other employee).

Reasonably required as a result of the employee's injury

- > Subsection 29(4) of the SRC Act provides a list of non-exhaustive matters that claims managers shall take into consideration in their determination of whether an employee reasonably requires attendant care services:
 - the nature of the employee's injury or illness and how much their ability to perform their own personal care tasks is impaired
 - the extent to which any medical service or nursing care received by the employee provides for their essential and regular personal care
 - the extent to which it is reasonable to meet any wish of the employee to live outside an institution
 - whether providing attendant care services would result in the employee being able to live relatively independently in their home rather than in a nursing home or some other alternative environment
 - the extent to which attendant care services are necessary to enable the employee to undertake or continue employment
 - any assessment made regarding the rehabilitation of the employee, and
 - the extent to which a relative of the employee might reasonably be expected to provide attendant care services.
- > Claims managers may also consider other relevant matters based on the actual claim circumstances, for example:
 - the time expected for the employee to recover and regain the ability to perform personal care tasks themselves, or
 - whether the employee could be trained in adaptive techniques or the use of equipment to enable them to perform the tasks independently.
- > Claims managers will need to ensure that they gather all the necessary evidence to apply the above considerations. In most cases it may be necessary to arrange and pay for an assessment of:
 - whether an employee reasonably requires attendant care services as a result of an injury, and
 - if so, what attendant care services the employee reasonably requires.
- > Section 70 (for Comcare) or section 108F (for licensees) or section 142(4) (for management of defence related claims) provides the relevant authority with the power to arrange and pay for an assessment of an employee's attendant care needs. The power will not extend to compelling an employee to attend or to cooperate with the assessment. However it is in the employee's interests to participate because, without the assessment, the relevant authority may not have sufficient evidence to accept liability for the claim for attendant care.
- > A rehabilitation authority's power under section 36 does not extend to an assessment of an employee's attendant care needs. However, relevant authorities are required to take into consideration any rehabilitation assessment when making a section 29 determination, but cannot rely solely on it if it does not address all the matters that shall be taken into account.
- > With the consent of the employee it may be possible for the relevant authority to obtain an assessment of attendant care needs concurrently with the rehabilitation assessment.
- > It is recommended that assessment of attendant care needs be made by a trained professional such as an occupational therapist or physiotherapist, and that the needs assessment be undertaken in the employee's home.⁹

⁹ This is in line with the recommendation made by Peter Hanks QC in his 2013 report of the [Review of the SRC Act](#). Mr Hanks referred to a Productivity Commission report on Disability Care and Support, which noted that assessments of need have typically been conducted by trained assessors, and that this has been shown to produce higher rates of reliability.

Who should provide attendant care service

- > Comcare recommends that relevant authorities only pay for attendant care services that are provided by a nationally certified attendant care provider.
- > The Australian Community Industry Alliance (ACIA) is the national peak body that endorses certification of attendant care provider organisations to the Australian Community Industry Standard (ACIS).¹⁰
- > Claims managers should use the [ACIS Register of providers](#) to promote the provision of quality attendant care services.
- > While there is no requirement under the SRC Act for attendant carers to demonstrate that they have suitable training and qualifications, use of the register of current ACIS providers promotes better practice across the Comcare scheme by ensuring employees reasonably requiring these services are:
 - enabled to recover from their injury, or
 - learn the coping strategies they need to manage any residual impairment.
- > Use of the ACIA register does not prevent a claims manager from applying their discretion to determine that attendant care services are best provided by a family member, or other person, based on the individual circumstances of the claim. The limited situations in which it may be appropriate include:
 - the remoteness of the employee's place of residence
 - a reasonable requirement of the employee for the attendant care provider to have particular skills, such as an ability to communicate in a particular language or comply with cultural expectations, or
 - the nature of the services required as a result of the injury are far and above what is reasonably expected to be provided by a family member and the employee may not be comfortable with another person providing those services.
- > Where a family member, or other person, is engaged to provide attendant care services the claims manager should encourage them to seek the appropriate training and qualifications for the purpose of employment by an ACIA-certified provider.
- > Where attendant care services are currently being provided a family member, or other person who is not ACIA certified, the claims manager may consider assessing whether those services continue to be reasonably required.

Managing provider complaints

- > If you or the employee have concerns or complaints about the attendant care provider or their service provision you can support the employee to:
 - raise the concerns with the support worker or their employer (the attendant care provider) if the employee feels comfortable to do so
 - change the attendant care provider, if the employee does not feel comfortable raising their concerns or they feel their concerns have not been addressed by the existing service provider
 - raise serious or ongoing concerns about a provider's behaviour with ACIA, where the provider is certified by them.

¹⁰ The Australian Community Industry Standard (ACIS) is the national quality management standard that specifically addresses the provision of attendant care services. ACIA also has a range of guidelines to support best practice and consistency in the attendant care industry. The guidelines are reviewed every two years and are available on the ACIA website.

Payment of attendant care services

- > A relevant authority can only pay up to the maximum weekly statutory rate when reimbursing attendant care services. This rate is updated on 1 July each year.¹¹
- > In cases where the actual weekly cost incurred to provide attendant care services is less than the maximum weekly statutory rate, the lesser amount must be paid.

Catastrophic injury

On and after 25 August 2018 if the compensable injury is a 'catastrophic injury', subject to section 29A of the SRC Act, there is no monetary cap on the amount of weekly compensation payable for attendant care services.

Catastrophic injury is defined in subsection 4(1) of the SRC Act to mean an injury where the conditions specified in the legislative rules are satisfied. The conditions for the definition are based on the minimum benchmarks for eligibility for catastrophic traumatic injuries for the workplace accidents stream of the National Injury Insurance Scheme (NIIS). The legislative rules are published on the [Federal Register of Legislation](#) and provide an explanation of each catastrophic injury.

The employee must still reasonably require and obtain attendant care services because of the compensable catastrophic injury and this guidance provides the relevant considerations for determining if attendant care services compensation is payable.

MORE INFORMATION

For more information, please contact Comcare's Scheme Policy and Design team on 1300 366 379 or email SchemePolicyandDesign@comcare.gov.au.

Please contact Scheme Policy and Design if you apply this scheme guidance and your determination is appealed.

¹¹ Subsection 29(1) provides the weekly amount and section 13 of the SRC Act provides for indexation of the amount specified in 29(1). See [annual rates](#).