



## COMPENSATION FOR CERTAIN ALTERATIONS, MODIFICATIONS OR AIDS AND APPLIANCES— SECTION 39 OF THE SRC ACT

### PURPOSE

To provide claims managers with scheme guidance about compensation payable for certain alterations, modifications or aids and appliance where an employee experiences an injury resulting in impairment under section 39 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

### GUIDANCE

#### Prerequisite requirements

Compensation is payable under section 39 of the SRC Act if an employee:

- > has a compensable injury resulting in impairment; and
- > is undertaking, or has completed a rehabilitation program<sup>1</sup>; or
- > is assessed as not capable of undertaking a rehabilitation program.

Impairment<sup>2</sup> means the loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function.

A part of the body or bodily system or function can be impaired where its usefulness or value is diminished, or it fails to perform normally or properly.<sup>3</sup>

The rehabilitation authority<sup>4</sup> can make an assessment that an employee is not capable of undertaking a rehabilitation program.

1 Subsection 4(1) of the SRC defines rehabilitation program: *includes medical, dental, psychiatric and hospital services (whether on an in-patient or out-patient basis), physical training and exercise, physiotherapy, occupational therapy and vocational training.*

2 Section 4(1) of the SRC Act provides the meaning of 'impairment'.

3 Re Halliday and Comcare [1994] AATA 77.

4 Section 4(1) of the SRC Act provides the meaning of 'rehabilitation authority', generally taken to mean the scheme employer. Section 36 then provides the authority for the assessment of capability to undertake a rehabilitation program, and specifies the persons who can make an assessment,

## Reasonably required

An alteration, modification, aid or appliance must be reasonably required, having regard to the nature of the employee's impairment and the requirements of the rehabilitation program, if relevant.

Court and tribunal decisions provide some guidance about the 'reasonably required' consideration. An alteration, modification, aid or appliance:

- > may be considered reasonably required where it alleviates pain and increases safety while driving;<sup>5</sup>
- > would generally not be considered reasonably required where its purpose is to assist the employee in a leisure or recreational activity<sup>6</sup>;
- > would generally not be considered reasonably required where it is unsuitable to use because of the nature of impairment.<sup>7</sup>

Other relevant matters for consideration may be whether the employee:

- > has difficulties with independence (e.g. communication, mobility, personal hygiene) and how the alteration, modification, aid or appliance assists them in these functions;
- > could reasonably access the aid or appliance through other means;
- > safety, or that of their family or carers, could be compromised without the alteration, modification, aid or appliance.

## Assessment of the need for alterations, modifications, aids or appliances

It may be necessary to arrange and pay for an assessment to determine what alterations or modifications, aids or appliances the employee reasonably requires.

Section 70 (for Comcare) or section 108F (for licensees)<sup>8</sup> of the SRC Act provides the authority to arrange and pay for an assessment. An employee is not obliged to attend or cooperate with the assessment, but it is in their interests to participate and progress their claim.

The assessment may be undertaken by an approved workplace rehabilitation provider<sup>9</sup> or a suitably qualified person such as an occupational therapist, and cover issues such as:

- > reasons for recommending any alterations, modification, aids or appliances;
- > alternatives considered;
- > how long it will be required;
- > whether it is likely to require repair or replacement;
- > recommended suppliers; or
- > any other relevant matter.

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5 Re Pollanen and Comcare [2004] AATA 134.

6 Re D'Costa and Comcare [2000] AATA 1109.

7 Re Birch and MRCC [2005] AATA 894

8 The authority for payment should be set out in the relevant authority delegation schedule.

9 A directory of approved workplace rehabilitation providers is available on Comcare's [website](#).

## Alteration of the employee's place of residence or place of work

Alterations are changes to the structure, layout or fittings of an employee's residence or work.

### Alterations to a place of residence

Consideration of alterations to a place of residence are generally limited to an employee's permanent or long-term residence.

Where an employee is residing in a rental property, relevant considerations may include:

- > property owner approval; and
- > evidence that shows they intend to reside at the property for at least one year (major alterations) or six months (minor alterations).

No compensation is payable under the SRC Act for moving or temporary accommodation costs while alterations to a place of residence are being undertaken<sup>10</sup>.

### Alterations to a place of work

Employers will generally be responsible for the cost of workplace alterations and any aids and appliances that are required in the workplace<sup>11</sup>.

Where an employee is undertaking a rehabilitation program, alterations, aids and appliances may also be payable under section 37 of the SRC Act.

However, an employee may choose to claim for workplace alterations, or aids or appliances under section 39 of the SRC Act.

## Modifications of a vehicle or article used by the employee

Modifications are enhancements to assist the employee with returning to work, mobility or activities of daily living. Modifications can be to a vehicle or article that the employee already owns.

Articles are anything that is not a medical aid or appliance. The article requiring modification must be reasonably required having regard to the employee's impairment.

No compensation is payable for costs associated with training the employee in the use of the modified vehicle or article, or roadworthy certification following vehicle modifications<sup>12</sup>.

## Repair or maintenance of alterations or modifications

No compensation is payable for the repair or maintenance of an alteration or modification.

Where the employee changes their place of residence or work, vehicle or article, a new claim for compensation is required for any alterations or modifications.

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<sup>10</sup> No mechanism under the SRC Act exists for the payment of any such compensation.

<sup>11</sup> The *Disability Discrimination Act 1992* (the DDA) requires employers to make reasonable adjustments to the workplace or working arrangements to enable a person with a disability to do their jobs. Further information is available [here](#).

<sup>12</sup> No mechanism under the SRC Act exists for the payment of any such compensation.

## Aids and appliances

An aid or appliance is an item used to assist the employee perform basic personal or work functions or to support a return to work.

Items for the treatment of an employee's injury are not payable under section 39. They may be considered under the medical treatment provisions of the SRC Act.<sup>13</sup>

### Repair or replacement of aids or appliances

Where compensation is payable for any aids or appliances used by the employee, section 39(1)(e) provides for the repair or replacement of such aids and appliances. Relevant factors for consideration may be loss, accidental damage or deterioration through normal wear and tear. Repair or replacement would not be compensable where an item has been intentionally damaged, misused, or the employee has chosen to dispose of it.

Consideration should be given to the repair of an aid or appliance before replacement. Claims managers may consider:

- > whether the employee requires the aid or appliance immediately;
- > the time it will take to repair the aid or appliance;
- > the cost to repair the aid or appliance compared to replacing it;
- > if the aid or appliance is covered under warranty.

Where there is a significant delay in the repair or replacement of an aid or appliance, it may be appropriate to temporarily hire the item.

Where a previously paid aid or appliance is covered under a valid warranty it is the employee's responsibility to arrange for such a repair or replacement.

Repair or replacement of batteries may be compensable where they are an integral part of an aid or appliance.

## Examples of alterations, modifications and aids and appliances

Attachment A provides examples of alterations, modifications and aids and appliances that may be compensable and others that are generally not.

## Matters to be considered when determining the amount of compensation payable

Paragraphs 39(2)(a) to (f) of the SRC Act provide a list of matters that claims managers will have regard to when determining the amount of compensation payable in relation to alterations, modifications, aids or appliances. Claims managers may also consider:

- > whether the alteration, modification, aid or appliance is appropriate for the employee, considering the nature of their impairment;
- > the cost of the requested alteration, modification, aid or appliance compared to suitable alternatives.

Subsection 39(3) provides for how the compensation payable is to be paid.

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<sup>13</sup> Scheme guidance—Definition of medical treatment is available on the [Comcare Website](#).

## Previously paid alterations or modifications

Section 39(2)(f) of the SRC Act provides for the consideration of increased value of a place of residence or vehicle where an employee previously received compensation and later sells that place or vehicle.

If an employee obtains a financial gain because of the compensable alteration or modification claims managers have discretion to offset that amount in their determination of a subsequent claim for any alteration of place of residence or modification of vehicle.

A claims manager may arrange for a valuation<sup>14</sup> of an employee's place of residence, vehicle or article before and after the alterations or modifications are made to ensure that the amount of compensation payable for subsequent claims is appropriate.

## Insurance, servicing and maintenance for aids and appliances

Compensation is not payable for the insurance of any alteration, modification or aids or appliances. Compensation is also not payable for servicing or maintenance of any alteration, modification, aid or appliance<sup>15</sup>.

## Safety standards

There are several Commonwealth and State standards that govern alterations to a building and the modification of vehicles that are used on Australian roads. Suppliers and manufacturers of aids and appliances products must also meet product safety requirements under Australian Consumer Law and are legally obliged to comply with Australian safety standards and only market safe products.

It is the responsibility of the employee to purchase aids and appliances that meet the product safety standards and the responsibility of the property owner to have any alterations or modifications carried out in accordance with the relevant standards and guidelines that apply.

## Ownership of alterations, modifications, aids or appliances

Aids and appliances that have been approved under section 39 of the SRC Act become the property of the employee.

Structural alterations or modifications that have been approved under section 39 become the property of the property owner.

Where the employee's employer funds workplace alterations, modifications or aids and appliances, they remain the property of the employer.

## FURTHER INFORMATION

For further information, please contact Comcare's Scheme Policy and Design team on 1300 366 979 or email: [scheme.policy@comcare.gov.au](mailto:scheme.policy@comcare.gov.au).

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

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<sup>14</sup> Valuations may be arranged and paid for under section 70 for Comcare or section 108F for licensees.

<sup>15</sup> No mechanism under the SRC Act exists for the payment of any such compensation.

# ATTACHMENT A—EXAMPLES OF ALTERATIONS, MODIFICATIONS AND AIDS AND APPLIANCES

<b>Alterations to place of residence</b>	
May include	Generally, do not include
Installation of handrails	New household appliances
Addition of ramps	Painting and tiling
Widening of doorways	Installation of additional cupboards or storage
Necessary modification to household storage, i.e., height	
<b>Modification to, or for, a vehicle</b>	
Wheelchair access	Sun-roofs
Hand controls	Metallic paint
Specialised seating	New Wheels
Steering column adjustments	
Automation of manual gears	
<b>Aids and Appliances</b>	
Telephone aids	Toasters
Non-slip mats	Whitegoods
Backrests	Baby car seats
Door openers	Vacuums