



TRAVEL AND RECESS PROVISIONS

PURPOSE

To inform determining authorities¹ about historical changes to travel and recess provisions under the *Safety, Rehabilitation and Compensation 1988 Act* (SRC Act).

BACKGROUND

Section 6 of the SRC Act has been subject to a number of amendments involving the travel and recess provisions.

The *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* (SRCOLA 2007) removed coverage for injuries sustained during non-work-related journeys and recess breaks where the employer lacked control over the activities of the employee.² The intention was to strengthen the connection between the employee's employment and the employee's eligibility for workers' compensation under the scheme.

The *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2011* (SRCOLA 2011) further amended section 6.³ Non-work-related journeys remained excluded from coverage under the SRC Act, but liability was reinstated for injuries occurring during an off-site ordinary recess.

This guidance provides information on current coverage under the SRC Act (post 2011 amendments) unless specifically stated otherwise.

GUIDANCE

Journeys

From 2011, the effect of the amendments was to remove from SRC Act coverage injuries sustained during normal every day 'commuting' to and from the workplace—those journeys between residence and 'usual place of employment.'

Journeys likely to be covered

The amended section retains coverage for those journeys that are 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, work appointment or meeting outside of the employee's usual place of work, as well as the return trip home from such situations.

For example, journeys from home to the airport and onward to attend an interstate meeting, and journeys directly from home to a local meeting (not a usual place of work)—as well as the return trip home from such places—would generally be situations which are still covered.

¹ Determining authority, in relation to a determination, means the person who made the determination [section 60(1) of the SRC Act]. For the purposes of this guidance, the determining authority will be referred to as the 'decision-maker'.

² Effective 13 April 2007.

³ Effective 7 December 2011.

Section 6(ea) and (g) also specify that coverage includes:

- > travelling between work and a place of education, and
- > travel between work and places where, in connection with the SRC Act:
 - a medical certificate is obtained
 - medical treatment is received
 - a rehabilitation program is undertaken, or
 - a medical examination or rehabilitation assessment is undertaken.

However, travel between such places and home is unlikely to be covered.

Journeys unlikely to be covered

Travel between the employee's usual place of work and home is not considered to be at the direction or request of the employer.⁴

In practical terms, this excludes coverage of travel claims from an employee working from home who was travelling between their home and their usual place of work. It also excludes coverage for employees who drive work supplied cars on a journey between home and the employee's usual place of work.

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 their journey between their home, or to suspend their ordinary recess, to resume employment. For example, if an employee had already commenced their journey home and on the way is asked to pick up something for work offsite before continuing on their journey. An injury sustained in these circumstances is likely to be covered, due to the work-related interruption to their journey.

Recess breaks

For injuries sustained after 2011⁵, coverage was re-instated for injuries sustained while temporarily absent from the workplace during an ordinary recess.

Ordinary recess includes:

- > lunch breaks in normal working hours, and
- > meal breaks during overtime and shift work periods.

Injuries that occur during an ordinary recess are likely to be covered unless an exclusion applies.

Employees may leave the workplace during work hours outside of what would generally be considered an 'ordinary recess' break. An injury sustained in these circumstances should be assessed against the broader 'in the course of employment test.' In some cases, an injury may fall within an interval or interlude during an overall period or episode of work.⁶ The decision-maker will need to establish how the injury was brought about, and what the employee was doing at the time they were injured.

Injuries between 2007 and 2011

For injuries sustained between 2007 and 2011⁷, coverage for recess claims is restricted if the activity is outside the employer's control. The SRCOLA 2007 amendments provided that injuries sustained while an employee was absent from the workplace during an ordinary recess in employment will generally not be compensable under the SRC Act.

Coverage for employees who are 'temporarily absent from the employee's workplace undertaking an activity associated with the employment' must be decided on a case by case basis, particularly in relation to consideration of 'an activity associated with the employment'. Many of these situations concern lunch time activities such as participation in social, sporting and health and wellbeing activities which may or may not be 'associated with employment'.

FURTHER INFORMATION

For further information, please contact Comcare's Scheme Policy team on 1300 366 979 or email: scheme.policy@comcare.gov.au.

4 Section 6(1C) of the SRC Act

5 Injuries sustained after SRCOLA, 7 December 2011.

6 Refer to Comcare Scheme Guidance – Interval or Interlude in an Overall Period of Work.

7 Injuries sustained between 13 April 2007 until 7 December 2011.