CLAIMS FOR INJURIES SUSTAINED AT THE BOUNDARY OF A PLACE OF WORK

PURPOSE

To provide scheme guidance about claims that involve the boundaries of a place of work (boundary claims) and relevant considerations when assessing them under the provisions of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

BACKGROUND

Boundary claims are claims for injuries which have been sustained while an employee is entering or exiting a place of work.[1] Boundary claims may also arise where an employee is taking a short break (other than an ordinary recess)[2] away from their place of work, during an overall period of work. Determining liability for a boundary claim requires consideration of the circumstances surrounding the injury, to assess whether the injury arose out of, or in the course of, the employee's employment.

For boundary claims, it may be unclear whether the employee has sustained an injury at their place of work, or whether they are still travelling to their place of work. A number of judicial decisions have considered the circumstances in which an injury sustained upon entry or exit to a place of work, or in proximity to a place of work, may fall within the boundary of that place of work. This guidance will reference some of those decisions.[3] However, as the circumstances of each claim will differ, reference to these decisions are for guidance only and are non-binding.

Based on those decisions, this guidance outlines what decision makers should consider when assessing liability for boundary claims.

GUIDANCE

Injury arising out of, or in the course of, employment

In circumstances where it is unclear whether an injury has occurred within the boundary of a place of work, liability to pay compensation is conditional on the connection between the injury circumstance and employment. For injury claims, the 'arising out of, or in the course of, the employee's employment' test under section 5A(1) of the SRC Act is the connection required between the injury and employment.[4]

For an injury to arise 'in the course of employment' there needs to be a temporal connection between the injury and employment. This means that the injury has occurred while the employee is 'at work', undertaking work-related activities, undertaking activities incidental to their work, or undertaking activities reasonably required or authorised in order to carry out their duties.

1 Section 4(1) of the SRC Act defines "place of work", in relation to an employee, as any place the employee is required to attend for the purpose of carrying out his or her employment.

2 See Scheme Guidance on *Travel and recess provisions*.

3 *Telstra Corporation Limited v Bowden* [2012] FCA 576; *Roncevich v Repatriation Commission [2005] HCA 40; Muthubalasuriyar and Comcare [2013] AATA 147; Comcare v Ford* VID426/2021; *Green and Comcare [2011] AATA 639; Mustica and Comcare [2019] AATA 5426; McKenzie and Comcare [2011] AATA 924.*

4 See Scheme Guidance on *Injury arising out of or in the course of employment*.

For boundary claims, where an employee sustains an injury while undertaking actual work duties or duties related to their employment, or the obligation of employment brings them to a particular place, the injury circumstances are likely to satisfy the injury test under section 5A(1) of the SRC Act.

Boundary claims may also arise for injuries sustained during an interval or interlude during an overall period of work, such as a short break, other than an ordinary recess. Consideration should be given to whether the employer induced or encouraged the employee to engage in an activity or be present at a particular place,[5] when determining whether an injury arose out of, or in the course of the employee's employment.[6]

Example one: Injury sustained in an employee authorised car park – *Telstra Corporation Limited v Bowden* [2012] FCA 576

The employee sustained an aggravation of a pre-existing injury moving a large waste bin that was blocking access to a designated parking space in a private car park. The employee accessed the car park with an employer supplied parking pass, and there was an agreement in place that permitted the employee to park in that space.

The Full Federal Court found that a causal connection to employment is not limited to activities an employee is required or expected to do to carry out the duties of their employment. The Court found that where an obligation of employment brings an employee to a particular place where the risk of injury arose, an injury sustained is one arising out of employment under section 5A(1), whether or not the employee was at that location for the purpose of actual work duties.[7]

Considerations for injuries arising at a 'place of work' or while temporarily absent from a place of work

Where it is not clear whether the circumstances of the injury satisfy the test under section 5A of the SRC Act, decision makers may also consider the additional circumstances specified in section 6(1) of the SRC Act to determine whether the injury may be treated as having arisen out of, or in the course of, the employee's employment. The considerations under section 6(1) may assist decision makers determine whether there is a causal connection between an injury and the employee's employment. Key considerations include:

Place of work

Where the connection to employment is unclear, the decision maker may have regard to section 6(1)(b) of the SRC Act which provides coverage for injuries sustained while an employee is at a 'place of work' for the purposes of employment.

Section 4(1) of the SRC Act defines 'place of work' as any place an employee is required to attend for the purpose of carrying out the duties of their employment. The place of work may extend beyond the immediate work area where the employee carries out their duties to include common areas and the general site occupied by the employer.[8] Employees may also have more than one place of work, including the employee's home where working from home arrangements have been established.[9]

5 *Comcare v PVYW* [2013] HCA 41.

6 See Scheme Guidance on *Interval or interlude during an overall period or episode of work*.

7 The principles in *Telstra v Bowden* reiterate those raised in the High Court decision *Roncevich v Repatriation Commission [2005] HCA 40*.

8 *Muthubalasuriyar and Comcare [2013] AATA 147*.

9 See Scheme Guidance on *Injuries and diseases arising from home-based work*.

Assessing whether an injury occurred at a place of work

When considering whether a location where an injury occurs meets the definition of 'place of work' or whether an employee has reached their place of work, the decision maker should have regard to the control exercised over the area by the employer. This can include:

- whether the injury occurred outside or inside the building
- whether the area is owned or leased to the employer
- whether there are other tenants, or the employer has sole occupation of the building
- whether the public have unrestricted or restricted access to the area
- the degree of proximity between the area and the employee's actual workplace
- whether the area forms part of the common areas of the building (i.e., foyers, lifts, toilets, stairwells)
- whether the employer has legal or practical control of the area
- whether the employer has control over access and egress to the building
- whether the employee has reached the public roadway to commence their journey home.

Other considerations a decision maker may have regard to when identifying whether there is a causal connection between the injury and 'place of work' include:

- the employee's start and finish work times (i.e., whether an employee was rostered on to work at a particular time, or were they required to be at a location to perform work at the time of injury)
- the reason the employee was at the place where the injury was sustained
- whether the obligation of employment brought the employee to a particular place
- whether there was a causal link between the injury and the employee's employment
- whether the employee had permission, or was induced or encouraged, to access the area where they were injured
- whether the employee had entered or left the boundary of their place of work at the start or end of a workday at the time of injury.

Decision makers will need to establish whether the employee was at their place of work, for the purposes of their employment, at the time the injury occurred.

Example two: Employee injured at their place of work – *Muthubalasuriyar and Comcare [2013] AATA 147*

The employee sustained fractures to their left wrist and right ankle when they left their office for a break and fell in an area of footpath outside their workplace. When the facts of the claim were considered, the Tribunal noted that the footpath was not within the limits of the employer's lease, nor was it an area where the employee was required to work.

However, the Tribunal found that the employee was injured in an area that lay between two areas that the employer did control, the building itself and bollarded parking spaces. The area had no practical use except as a means of access and egress by staff who accessed the building and parking spaces. The employer condoned use of the footpath for work breaks and building access. The Tribunal also found that the employer controlled access to the footpath from the building itself and from the street level. The Tribunal concluded that the employee was injured at their place of work, and the injury was found to have arisen out of, or in the course of their employment.

Example three: Injury sustained on stairs of building where offices of employer located – *Comcare v Ford VID426/2021*

The employee fell and sustained injuries while walking to work. The fall occurred on stairs leading to the building where the offices of their employer were located on the 13th floor. The area where the employee fell was part of the building's common area which was open to and regularly used by the public. The Tribunal found the employee was using the route to reach their place of employment; that the route was one of three permitted means of entry to their place of employment and it was not material which route was used; and that as the employee had to attend their workplace and could not otherwise reach their employment, there was a sufficient causal connection between the injury and their employment to establish the injury arose out of employment.

Comcare appealed the Tribunal's decision to the Federal Court, and the Court upheld the appeal by consent.

The joint submissions considered by the Court in upholding Comcare's appeal agreed that the Tribunal erred in finding the injury arose out of employment where:

> the Tribunal did not make a finding that, in traversing the common areas of the building, the employee was acting in consequence of a specific employment obligation, duty and incident or condition;

> the Tribunal did not make a finding that the place of the fall was a 'locality risk' or 'zone of special danger'; and

> the Tribunal did not make a finding of a causal relationship between the injuries and employment as required to establish that the injuries 'arose out of employment'. Instead, the Tribunal misdirected itself in considering principles associated with the common law duty of care and the course of employment.

Injury sustained while temporarily absent from a place of work

Section 6(1)(b) and (c) provide coverage for injuries occurring during a temporary absence from a place of work on an ordinary recess, or while undertaking an activity associated with employment,[10] or at the direction or request of the employee's employer, respectively. 'Ordinary recess' is not defined in the SRC Act but is generally accepted to mean a regular break taken at a consistent time of day, such as a lunch break.

Boundary claims may arise where an employee sustains an injury during a temporary absence away from their place of work. Decision makers should consider whether:

> the employee was on an ordinary recess

> the employee had written or verbal permission, or encouragement, to undertake the activity resulting in injury

> there was a requirement by the employer for the employee to participate in the activity resulting in injury.

Where an injury sustained during an absence from the employee's place of work does not satisfy the ordinary recess or temporary absence provisions in section 6(1)(b) or (c), consideration should be given to whether the injury occurred during an interval or interlude in an overall period of work. Decision makers should have regard to the common law interval and interlude considerations relevant to section 5A(1), including whether the employee was induced or encouraged to be present at a particular place such as a designated walkway or breakout area.

10 Examples which may or may not be associated with the employee's employment include activities such as offsite meetings or seminars, health and wellbeing, cultural, sporting or team building activities.

Example four: Injury sustained during an activity associated with employment – *Saunders and Comcare [2011] AATA 238*

The employee sustained an injury while playing soccer during a lunch time match organised by their employer's Social Club. The employee was permitted to take an extended lunch break without loss of pay to participate in the soccer match.

The employer had encouraged staff to participate in Social Club activities, issued guidelines requiring staff to notify their supervisor about the activities they would partake in, and used its internal communications system to promote and advertise the soccer match and the associated activities, including training.

The Tribunal noted that the soccer match took place during working hours, employees were granted paid time to participate in the game, and all members of the soccer team were employees of the agency. The Tribunal found that these facts supported that the employee's injury was 'associated with their employment' within the meaning of section 6(1)(c)(i) of the SRC Act.

Example five: Injury sustained at the entrance to a building – *Green and Comcare [2011] AATA 639*

The employee was on their lunch break when they fell outside the entrance of the building where they worked. The employer was a tenant of the building that was managed by a separate party. The area where the employee fell was accessible to the public, was not a place the employee was required to attend for the purpose of carrying out their work duties, and there was no work policy encouraging employees to do so. The building managers also erected 'slippery when wet' signs, suggesting that they were responsible for any maintenance issues in the area.

The injury was sustained when SRC Act compensation was limited to injuries occurring during an ordinary recess that took place at the employee's place of work. The issue before the Tribunal was whether the employee was at their place of work at the time of their injury. The Tribunal noted that the lessor's exercise of control over the area indicated that the employer was not responsible for the area where the injury occurred. The area was not considered to be part of the employee's place of work, and therefore the injury did not arise out of, or in the course of employment. The employee's temporary absence from their place of work was not for the purpose of carrying out an activity associated with their employment, nor was it at the direction or request of their employer.

Injury sustained while arriving at or leaving a place of work (journey considerations)

Section 6(1)(d) of the SRC Act provides for compensation where employees are injured while travelling, at the direction or request of their employer, for the purposes of employment.[11] Section 6(1C) excludes liability for injuries arising from a journey between an employee's usual place of work and home. 'Usual place of work' is not defined in the SRC Act but is taken to mean a place that the employee is required to regularly attend for work purposes.

Determining liability for a claim where the injury arose during travel between home and work requires consideration of the particular circumstances of injury, including whether the employee has entered or left the boundary of their place of work to commence their workday or their journey home. Considerations include, but are not limited to:

- the level of employer control over access and egress (e.g., lifts or walkways)
- whether the employee had authorised or exclusive access to a carpark
- whether the employee reached an area or roadway accessible to the public.

11 See Scheme Guidance on *Travel and recess provisions*.

Example six: Injury sustained on the way to an employee authorised car park – *Mustica and Comcare [2019] AATA 5426*

The employee left their immediate work area at an airport to make their way to the secure employee car park for their journey home. The employee was injured while running to a courtesy shuttle bus accessible only by employees, which required use of an employer authorised ID card.

The Tribunal found that the employee sustained an injury within the reasonable boundaries of their place of work, and not on a journey home. The employer authorised the employee to access the secure staff car park, and the employee was going from their place of work to that place in the course of egress from their employment. While the surrounding area was accessible by members of the public, the employee would not have been at the shuttle bus stop were it not for their employment. The Tribunal considered that the employee had not commenced their journey home until they left the carpark and exited from the airport premises on to a main road.

Example seven: Injury sustained after commencing journey to a place of residence – *McKenzie and Comcare [2011] AATA 924*

The employee fell in a carpark which was situated across the road from their place of work at a hospital. The carpark had been touted as an extra place to park while a new carpark was being built on-site. At the time of the employee's injury, although the car park was designated for hospital use, access to the area was not effectively limited to staff of the hospital and the hospital did not have control over the area at the time the injury occurred.

The Tribunal noted that the employee had crossed nearly half a kilometre of public roads and spaces to reach the area, indicating that the area in which they were injured was not their place of work. The Tribunal found that although the employee had not actually reached their car, they had embarked on the journey to their place of residence.

Evidence to assist claim determination

Before deciding a claim for an injury that occurs at the boundary of a place of work, the following evidence may assist the decision maker with their determination:

- a copy of the lease agreement of the building (if applicable)
- photos and/or a site map with an aerial view of the area/place indicating where the employee was injured and where their place of work is located
- copy of an employee's duty statement or an employer's statement detailing whether the employee was required to carry out any of their duties at the place the injury occurred
- details of any directives that may have been issued by the employer regarding the place in question, such as encouraging employees to undertake certain activities there, or advising employees to keep away from the area
- evidence of any written or verbal agreements regarding the place in question, such as authorised use of a private carpark
- employee handbooks, induction material, or training documents
- copies of any incident reports.

FURTHER INFORMATION

For further guidance on assessing claims for initial liability determinations see the scheme guidance on:

- Definition of injury and disease
- Injury arising out of or in the course of employment
- Injury in an interval or interlude during an overall period or episode of work
- Injuries and diseases arising from home-based work
- Travel and recess provisions
- Reasonable administrative action.

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