



DEFINITION OF INJURY AND DISEASE

PURPOSE

To provide scheme guidance about the important distinction between the injury (other than a disease) and disease definitions of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). Each definition creates different but related bases for injury liability.

BACKGROUND

Determining whether an employee has suffered an injury is a core component of the initial liability process. Identifying whether an employee suffers from an 'injury (other than a disease)' or a 'disease' can have a significant impact on how a claim for compensation is determined under the SRC Act. A number of judicial decisions have considered the meaning of injury under the SRC Act. These cases can help guide decision makers when determining how a claimed condition is best identified, as well as the relevant connection to employment test to apply in the circumstances.

This guidance outlines what decision makers should consider when characterising a claimed condition as an injury (other than a disease) or a disease when determining liability in accordance with section 14 of the SRC Act.

GUIDANCE

Types of injury

The SRC Act outlines the different types of injury in section 5A(1).¹ The three broad types being:

- > a disease
- > a physical or mental injury (other than a disease)
- > an aggravation of a physical or mental injury (other than a disease).

A disease is further defined in section 5B(1) as:

- > an ailment, or
- > an aggravation of an ailment.

The SRC Act uses the term 'injury' in two different ways. It is used as a broad description of a condition that is compensable under the SRC Act, which includes an injury (other than a disease), a disease, or an aggravation of an injury (other than a disease). The term 'injury' is also used to distinguish between an injury (other than a disease) and a disease. The terms 'injury simpliciter' or 'frank injury' are sometimes used to reference this narrower definition of injury.

It is important to understand whether a condition is an injury (other than a disease) or a disease (being an ailment or aggravation of an ailment) as each classification is subject to different provisions and connection to employment tests under the SRC Act.

¹ Prior to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* (SRCOLA) the definition of injury and disease were found in section 4(1) of the SRC Act. Claims made before this amendment may refer to the definitions in this section.

Connection to employment

Injury (other than a disease) claims

For an injury (other than a disease) to be compensable, it must have arisen out of, or in the course of, the employee's employment.² An injury may arise 'out of employment' if there is a causal relationship between the injury and employment. For an injury to arise 'in the course of employment' there needs to be a temporal connection between the injury and employment. This means the injury has occurred while the employee is undertaking work-related activities or activities incidental to their work. It extends cover beyond the period the employee is undertaking their normal work duties or at their place of work, to include something the employee is reasonably required or expected to do to carry out their duties.³

Disease claims

The SRC Act considers diseases differently to injuries. For an ailment to be compensable as a disease, it must have been:

- > contributed to, to a material degree, by the employee's employment (for ailments with a date of injury before 13 April 2007); or
- > contributed to, to a significant degree, by the employee's employment (for ailments with a date of injury on or after 13 April 2007).

Example one – injury and disease

An employee who works in a warehouse sustains a broken arm when a forklift collides into them. The decision maker accepts liability for the broken arm as an injury under section 5A(1) of the SRC Act as it occurred in the course of their employment.

The workplace investigation reveals that the incident arose because the employee could not hear the warnings of their co-workers. After an audiological examination, the employee submits a claim for compensation for hearing loss as a result of long-term exposure to excessive machine noise. The decision maker accepts liability for the claimed hearing loss as a disease that was contributed to, to a significant degree, by the employee's warehouse employment under section 5B(1) of the SRC Act.

If the incapacity compensation claim is rejected and later accepted (following a reconsideration or appeal decision of the Administrative Appeals Tribunal) the post-determination compensation leave period commences on the first day of compensation leave after the day the claim for incapacity compensation is determined in favour of the employee. That may be the day after the date of the reviewable decision made by a relevant authority or the day after the date of a merits review decision made by the Administrative Appeals Tribunal in which it is determined that incapacity compensation is payable under sections 19 or 22 of the SRC Act, as the case may be.

Aggravation claims

An aggravation is also an important injury type to consider. A claim is not disqualified on the basis that the employee has a pre-existing condition or disposition toward the claimed condition. It requires decision makers to consider whether employment contributed towards a worsening of an existing condition. An aggravation can occur in respect of an injury (other than a disease) or an ailment, regardless of whether the underlying injury (other than a disease) or ailment was itself a compensable condition.

Under the SRC Act, aggravation includes an acceleration or recurrence. For an aggravation of an injury (other than a disease), the acceleration or recurrence must arise out of, or in the course of, the employee's employment to be compensable.⁴ For an aggravation of an ailment to be compensable, it must be contributed to, to a significant degree, by the employee's employment.⁵

2 See Scheme Guidance *Injury arising out of or in the course of employment*

3 *Szajna v Australia Postal Corporation* [2014] FCA 1136; *Hatzimanolis v ANI Corporation Ltd* [1992] HCA 21; *Comcare v PVYW* [2013] HCA 41

4 Section 5A(1)(c) of the SRC Act

5 Section 5B(1) of the SRC Act

Characterising a claimed condition as an injury or a disease

Many judicial decisions have considered the nature of an injury as defined by the SRC Act, as well as how to apply the definitions of injury (section 5A) and disease (section 5B). When presented with evidence of a condition, the decision maker should apply the order for considering liability set out by the High Court in *MRCC v May*⁶ as follows:

1. Was there an ailment as defined under the SRC Act?
2. If so, was the ailment contributed to, to a significant degree by the employee's employment?
3. If the answer to either of the above is no, was there an injury (other than a disease)?
4. If so, did the injury arise out of, or in the course of, the employee's employment?

Injury

While an injury (other than a disease) can encompass a broad range of conditions, decision makers should consider some key attributes that have been identified in a number of judicial decisions when making this assessment. In *MRCC v May*⁶, the High Court held that even if an individual is significantly disabled by their symptoms, without evidence of a pathological change it cannot be established that there is an injury (other than a disease) for the purpose of section 5A of the SRC Act.

Based on the guiding principles outlined in the *May* decision, considerations when characterising whether an injury has occurred include:

- > whether a pathological change in a physiological state has taken place⁷ – this change can be of any degree, even a disturbance in the employee's ordinary state
- > whether the change is identifiable
- > whether the change is sudden – although not required, the suddenness of a change can be a useful indicator of whether a condition is an injury (other than a disease)
- > whether subjectively experienced symptoms are reported in the absence of an associated physiological or psychiatric change, indicating that it is unlikely an injury (other than a disease) has been sustained.

Example two – determining whether a condition is an injury

An employee cracks their tooth while eating one of the complimentary lollies provided at a compulsory training session. When reviewing the claim, the decision maker is unsure as to whether a cracked tooth would be compensable. They apply the key attributes of an injury to the claim and find that a cracked tooth is a sudden, identifiable pathological change in a physiological state. As the cracked tooth satisfies all of the tests to meet the definition of injury and the incident occurred while the employee was at a work-related training session, the decision maker determines that the injury is compensable.

Disease

A disease is defined under section 5B of the SRC Act. A disease is an ailment suffered by an employee, or an aggravation of such an ailment, that was contributed to, to a significant degree, by the employee's employment. An ailment is defined in section 4(1) of the SRC Act as 'any physical or mental ailment, disorder, defect, or morbid condition (whether of sudden onset or gradual development)'. Significant degree is defined in section 5B(3) as being 'a degree substantially more than material'.⁸ The term 'significant' does not rule out the contribution of other non-employment factors; a condition can be contributed to by both employment and non-employment factors. However, the employment factors (considered independently of non-employment factors) must have contributed to the development of the ailment to a significant degree for it to be compensable under the SRC Act.⁹

6 *Military Rehabilitation and Compensation Commission v May* [2016] HCA 19

7 *Commonwealth of Australia v FJ (A Pseudonym)* [2017] HCATrans 211

8 Section 5B(2) provides a number of matters that may be taken into account when determining this level of contribution.

9 *Havnen and Comcare* [2010] AATA 535

Case law has further clarified that a condition needs to be outside the boundaries of normal mental functioning and behaviour for it to constitute a psychological ailment for the purposes of the SRC Act.¹⁰ Recent case law suggests that there is no need for there to be an identifiable physiological change or a physiological change to establish a physical ailment.¹¹ However, decision makers need to be satisfied that the employee has an ailment as defined in the SRC Act and will need to carefully consider all the medical information to determine whether it is more likely than not that i) there is an ailment; and that ii) the employee's employment significantly contributed to the claimed ailment. This will depend on the facts of each matter.

Example three – determining whether a condition is a disease

An employee submits a claim for compensation after contracting Legionnaires' disease. In their claim they allege that they contracted the Legionnaire's disease while working at a remote site for a period of several weeks. Test results are inconclusive but note that the presence of the legionella bacterium was possible at the time the employee was at the site. Medical evidence also notes that the employee is an avid gardener (non-employment factor), and potting mix is a known potential source of exposure to the legionella bacterium. However, a second employee who worked at the site had also contracted Legionnaire's disease in the absence of any likely exposure to the legionnaire bacterium outside of work. The decision maker accepts liability under section 5B(1), finding that on the balance of probabilities, the employee is suffering from an ailment that was significantly contributed to by their employment.

A formal clinical diagnosis is not required for a decision maker to find that an injury or a disease has been sustained.¹² A decision maker should always base their characterisation of a claimed condition on the medical evidence available to them, but a clinical diagnosis is not required for liability to be determined.¹³ Decision makers do not need to postpone liability decisions while seeking a more precise clinical diagnosis, however, need to be satisfied that an injury or a disease has been sustained. The evidence required to substantiate that an injury or disease has been sustained will depend on the facts and circumstances of each case.

Underlying or pre-existing conditions

In some circumstances it can be difficult to tell whether a condition is an injury (other than a disease) or a disease for the purposes of the SRC Act, an aggravation of an underlying or pre-existing condition, or the normal progression of an underlying or pre-existing condition.

When presented with evidence that an employee's underlying or pre-existing condition may be responsible for a new condition, decision makers should not assume that liability does not exist. Depending on the evidence at hand, an underlying or pre-existing (non-compensable) condition may result in an injury for the purposes of the SRC Act. The High Court gave several examples of such events in *MRCC v May*, including destruction of tissue, collapse of vertebrae, rupture of blood vessels, occlusion of an artery or development of a lesion.¹⁴ For the injury (other than a disease) to be compensable, it must be found to arise out of, or in the course of the employee's employment.¹⁵

¹⁰ *Comcare v Paul Mooi* [1996] FCA 1587

¹¹ *Wuth v Comcare* [2022] FCAFC 42

¹² *Kelso and Telstra Corporation Limited* [2015] AATA 403

¹³ *Lim v Comcare* [2016] FCA 709; *Military Rehabilitation and Compensation Commission v May* [2016] HCA 19, paragraph 80

¹⁴ *Military Rehabilitation and Compensation Commission v May* [2016] HCA 19, paragraph 78

¹⁵ *Darrin Zickar v MGH Plastic Industries Pty Ltd* [1996] HCA 31; section 5A(1)(b) of the SRC Act

Example four – injury and underlying conditions

An employee who is travelling interstate for work experiences a stroke while waiting to board their aircraft. The decision maker can see from the medical evidence that the stroke was the result of a blood clot, and that the employee suffers from pre-existing high blood pressure and diabetes, conditions that do not themselves ordinarily result in strokes, but significantly increase risks associated with blood clotting.

Although the stroke may be the result of underlying conditions, the occlusion of an artery by a blood clot is a sudden physiological change and is characterised as an injury (other than a disease) in accordance with section 5A(1) of the SRC Act. As the employee was travelling for the purposes of work when the stroke occurred, a temporal link to employment is established, and the injury is found to arise 'in the course of' the employee's employment. Therefore, the decision maker accepts liability for the stroke as an injury (other than a disease) under the SRC Act.

The employee has also submitted a claim for their high blood pressure and diabetes, the underlying pre-existing conditions that contributed to the stroke. The decision maker considers that these conditions constitute ailments and are therefore subject to the significant employment contribution test under section 5B(1) of the SRC Act. As there is no evidence identifying that the employee's employment significantly contributed to the development of these conditions, the decision maker finds that the employee's high blood pressure and diabetes are not compensable under the SRC Act.

An employee's employment may also contribute to an aggravation of an underlying or pre-existing condition irrespective of whether the underlying or pre-existing condition is compensable. A decision maker will need to consider an employee's condition before and after the claimed aggravation to establish how the aggravation is related to the employee's employment and the extent of the aggravation (i.e., the extent the underlying or pre-existing condition has been affected by the aggravation), and then consider if and when the effects of employment have ceased (i.e., the employee has returned to their pre-aggravation level).

With these complexities in mind, decision makers should always seek evidence to assist them in characterising a claimed condition under the SRC Act.

Further information

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

- > [Specified diseases and employment](#)
- > [Travel and recess provisions](#)
- > [Injury arising out of or in the course of employment](#)
- > [Injury in an interval or interlude during an overall period or episode of work](#)
- > [Injury 'suffered as a result of' reasonable administrative action](#)
- > [Disease provisions relating to firefighters](#)

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