



EMPLOYEES RECEIVING SUPERANNUATION BENEFITS AND INCAPACITY PAYMENTS

PURPOSE

To provide scheme guidance on the meaning of 'received' for the purposes of calculating incapacity payments under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) when an employee has received benefits under a superannuation scheme.

BACKGROUND

Incapacity payments are normally calculated under section 19 of the SRC Act. When an employee is both retired and in receipt of superannuation benefits as a result of that retirement, incapacity payments are calculated under sections 20, 21 or 21A of the SRC Act ('superannuation provisions').

The intention of the superannuation provisions is to reduce the rate of incapacity paid to the employee by the amount of the superannuation benefits received. What constitutes 'received' is clear when the employee takes a superannuation pension or lump sum benefit in hand. However, it is less clear when the benefit has been preserved or rolled-over.

GUIDANCE

Definition of terms

For the purpose of this guidance, the following terms are used:

Preserved benefits

Superannuation benefits which are held in a superannuation fund until the time the law and/or a condition of release is met that allows the benefits to be paid. These benefits are generally employer contributions (and contributions for which a tax deduction has been claimed). All contributions made by (or on behalf of) an employee, and all earnings since 30 June 1999¹, are preserved benefits.

Rolled-over benefits

Some or all of existing superannuation benefits that have been transferred from one superannuation scheme into another scheme. This may be as a result of a default mechanism of the scheme or because of an election on the part of an employee.

Preservation age

An age (normally between 55 and 60 depending on the employee's date of birth) at which the employee is eligible to gain access to their preserved benefits.

¹ New preservation rules took effect from 1 July 1999. Under the new regulations, all superannuation contributions from that date forward are preserved until an employee reaches preservation age.

Superannuation 'received'

An employee has received a superannuation amount if they have retired² from Commonwealth or licensee employment, and:

- > accessed their superannuation benefits, or
- > reached their minimum preservation age and elected to roll-over their superannuation benefits to another scheme (or their scheme has automatically rolled over their benefits for them).

If an employee has not accessed their superannuation, has not made any election in respect of their superannuation and no action is taken in respect of their superannuation, then they have not 'received' their superannuation for the purposes of the SRC Act.

If an employee receives a superannuation benefit prior to undertaking employment with the Commonwealth or a licensee, this amount is not 'received' as a result of the employee's retirement and cannot be taken into account when calculating incapacity payments.

Accessing superannuation

Conditions of release are the circumstances an employee needs to satisfy in order to access their superannuation benefits. The conditions of release may be different according to an employee's superannuation scheme, but the most common conditions of release include:

- > **retirement**—employees can access their superannuation benefits when they have reached preservation age and have retired from employment. A retired employee cannot generally access any employer-financed/superannuation guarantee superannuation if they have not reached preservation age.
- > **transition to retirement (attaining preservation age)**—employees who are under age 65 and have reached preservation age, but remain gainfully employed, may access their benefits as a non-commutable income stream. Superannuation accessed through a transition to retirement arrangement cannot be taken into account when calculating incapacity compensation (unless the employee subsequently retires).
- > **attaining pension age**—an employee who reaches pension age can access their superannuation benefits at any time, regardless of whether they have retired from employment or not.
- > **invalidity retirement/cessation due to ill health**—invalidity retirement/permanent disability benefits that are paid by the superannuation fund to the employee upon separation from employment, regardless of preservation age.

Rolling-over superannuation

Once an employee has reached preservation age, the rolling-over of superannuation benefits to another scheme demonstrates an 'unequivocal power of disposition'³ over that amount. The employee is considered to have notionally received the superannuation amount and chosen to roll it over. As a result, when calculating an employee's incapacity payments, the superannuation amount rolled-over must be taken into account even though the employee has not taken the superannuation benefits directly in hand.

This would also apply where the superannuation scheme has rolled over the superannuation benefits to another scheme (under the rules of the scheme's trust deed) where no election is made by the employee.⁴ This involves situations where a particular superannuation scheme's rules and discharge obligations specify that the employee must elect to take a benefit from the superannuation fund (i.e. where the fund does not have a preservation option), but the employee refuses or fails to make an election.

² In the context of the SRC Act, 'retired' includes any separation from Commonwealth or licensee employment, if that separation ultimately results in the employee receiving a superannuation benefit.

³ *Mirkovic and Telstra Corporation Limited* (1993) 18 AAR 491.

⁴ *Archer v Comcare* (2000) FCA 1296.

Calculating incapacity payments

When a (retired) employee receives superannuation benefits by way of a pension and/or lump sum, their incapacity payments must be calculated in accordance with the superannuation provisions of the SRC Act.⁵ The superannuation provisions include a 'superannuation amount' component.⁶ In most cases, this component is the amount the employee's superannuation fund identifies as the employer-financed contributions⁷. Once determined, this superannuation amount is included in the incapacity calculations under section 20, 21 or 21A of the SRC Act.

FURTHER INFORMATION

For further information on calculating incapacity see the [scheme guidance](#) on:

- > Calculating Normal Weekly Earnings
- > Adjusting Normal Weekly Earnings under section 8(10) of the *Safety, Rehabilitation and Compensation Act 1988*
- > Calculating incapacity compensation after 45 weeks

Scheme [e-guidance](#) is also available on the incapacity provisions.

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

5 *Safety, Rehabilitation and Compensation Act 1988* (SRC Act), section 20, 21 and 21A.

6 SRC Act, section 20 and 21A.

7 If the employer-financed contributions cannot be identified, the superannuation amount can be assessed as:

- > the amount the decision-maker attributes to employer contributions, or
- > the pension or lump sum amount the employee receives in that week [section 4(1)].