

Double benefits (section 118)

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Introduction

The SRC Act (section 118) provides that compensation is not payable to:

- an employee in respect of an injury, where State workers' compensation has been received for that same injury by the employee, or
- a dependant of a deceased employee in respect of an injury resulting in death, where State workers' compensation has been received by or paid for the benefit of the dependant in respect of the same injury resulting in death of the employee.

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Employees who have already received compensation under the SRC Act

Under section 118(2) if:

- an employee has already received compensation under the SRC Act in relation to an injury and then receives compensation under a State workers' compensation scheme for the same injury, or
- compensation has been received by or paid for the benefit of a dependant under the SRC Act in respect of an injury resulting in death of the employee and the dependant then receives compensation or has compensation paid for their benefit under a State workers' compensation scheme

Comcare may recover the amount paid from the employee or dependant.

There is no discretion to recover a lesser amount than what Comcare paid.

Under section 118(6) 'State workers' compensation' is defined as compensation recoverable under the law of a State, Territory, or a foreign country, relating to workers' compensation.

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Information gathering power

Under section 118(3), when a claim for compensation is received, Comcare may request the claimant provide a statutory declaration, stating whether any State workers' compensation has been received in respect of the injury for which they are claiming compensation from Comcare.

Under section 118(4), if a claimant refuses, or fails to supply a statutory declaration, without a reasonable excuse, their rights to compensation under the SRC Act or bring proceedings under the SRC Act are suspended until a statutory declaration is provided. During the suspension period no compensation is payable to the claimant.

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Example of double benefits

An employee working for the Commonwealth and also working part-time as a cleaner at a hostel, develops an overuse injury to their left hand. The employee seeks compensation by reference to her duties at the hostel job and is awarded payment by a State workers' compensation scheme.

The employee then seeks compensation from Comcare for the same injury.

The claim against Comcare must be denied under section 118(1) as that employee has already received State workers' compensation for that same injury.

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