

Overpayments

Claim management

✓ Claim reviews

✓ Medical treatment and other support

✓ Rehabilitation and return to work

✓ Incapacity calculation and payment

✓ Reimbursement and other payments

✓ Overpayments and recoveries

✓ Work related death

✓ New or changed conditions

✓ Permanent impairment

✓ Miscellaneous

Jump to:

Introduction

How do overpayments occur?

Considerations for recovering
an overpayment

Introduction

The CAIS Debt Recovery Team is responsible for all actions related to the recovery of overpayments.

Any changes, questions or issues with the recovery of an employee's overpayment should be raised with the Debt Recovery Team.

What is an Overpayment?

An overpayment occurs when Comcare pays a person (employee, employer or service provider) more than they are legally entitled to receive. An overpayment is a debt due to the Commonwealth and is recoverable in a court of competent jurisdiction.

When an overpayment occurs, Comcare has a responsibility to first recover the debt owed. Recovery action must be initiated in most cases prior to any consideration for the write off or waiver of a debt.

There are two main types of payments that can lead to overpayments:

- incapacity payments – financial compensation for loss of earnings, and
- non incapacity payments – payments not related to incapacity (i.e. medical expenses, rehabilitation and permanent impairment payments).

Sections 113 and 114 of the SRC Act provide the specific legislative provisions for overpayments.

[Return to top of page](#) | [Return to top of section](#)

How do overpayments occur?

Overpayments can occur in a range of circumstances; however, the most common causes of overpayments include, but are not limited to:

- an amount of compensation should not have been paid to a person,
- an amount of compensation has been paid to a person as a result of a false or misleading statement/representation or due to a failure or omission to comply with the SRC Act, or
- the employee has received an award or damages settlement through third party, State workers' compensation or other State compensation.

Amount should not have been paid

This is the most common form of incapacity and non-incapacity overpayments and occurs when an amount of compensation has been paid to a person that should not have been paid.

An incapacity overpayment can occur when:

- Comcare makes an error (e.g. data is entered incorrectly into the system)
- An employee does not advise Comcare immediately of changes to their normal weekly earnings (NWE). (e.g. include reductions to higher duties, overtime and/or other payable allowances).
- superannuation has not been taken into account or there has been a change to the superannuation payment rate
- Comcare received advice of actual earnings from an Xpayee who has recommenced employment after payments after payments have been made
- a determination has been reviewed which changes the outcome, resulting in an overpayment (e.g. reconsideration or Administrative Appeals Tribunal decision)
- Compliance activities have identified instances of undeclared income
- Comcare received advice about the death of an employee after payments have been made
- an employee is imprisoned.

Non-incapacity related overpayments

Non-incapacity related overpayments can occur when:

- an incorrect employee or service provider is paid
- an employee or service provider is paid an incorrect amount
- duplicate payments are made to either employee or service provider
- a determination has been reviewed which changes the outcome, resulting in an overpayment (e.g. reconsideration or AAT decision) of a determination
- a Common law or third-party settlement is reached
- money prepaid for travel is not used
- there is a discovery of an overpayment through compliance activities, a claim review or following an audit of the claim
- an amount was paid as a result of a false statement or misrepresentation.

Example: An employee has submitted receipts related to their compensable condition for reimbursement. These receipts are mistakenly paid to the provider instead of the employee. This results in an overpayment in which the provider needs to be notified and funds need to be recovered from the incorrect party and reimbursed to the correct party.

Amount paid as a result of a false statement or misrepresentation

An overpayment can occur when a person receives an amount of compensation as a result of a false or misleading statement or representation, or due to a failure or omission to comply with a provision of the SRC Act.

A person can be said to have made a deliberately or intentionally false or misleading statement in a situation where they have actual knowledge that their statement or representations are false or that they know they did not comply with the provisions of the SRC Act. Actual knowledge should be decided based on the facts of the claim and the circumstances in which the fraud occurred.

Example: An employee has an accepted claim for compensation for a back injury that occurred at work in the photocopying room when they lifted a heavy box. Ten years into the life of the claim and the employee is continuing to receive incapacity payments until new evidence indicates the employee's condition has resolved. Comcare reviews the claim and finds that the employee's injury resolved eight years ago. The employee later admits to falsely claiming compensation in respect of their back injury. Accordingly, Comcare revokes liability for all incapacity and medical treatment claims previously paid since the recovery.

Liable to pay an amount to Comcare

An overpayment can occur when a person is in receipt of incapacity/non-incapacity benefits and third party or common law damages in relation to the same incident. Where compensation has been paid to a person and the person is subsequently awarded third party or common law damages, the person is liable to pay an amount of compensation back to Comcare.

Example: An employee submits a claim for a neck injury after they were involved in a motor vehicle accident while travelling for work purposes. The claim is accepted by Comcare, however, the employee later decides to make a third-party claim. The matter is settled outside of court and third-party damages are awarded to the employee in respect of the motor vehicle accident. In this instance the employee must repay any monies that Comcare has paid to them.

Overpayments raised by Compliance activities

Sometimes when the Claims Compliance and Assurance Team (CCAT) complete a compliance activity, they may find invalid invoices, receipts or instances of undeclared income.

In these instances, Comcare will consider raising an overpayment to recover the monies owed to Comcare.

If CCAT decides to raise an overpayment in relation to the invalid invoices or receipts or the undeclared income, they will work closely with the Claims Manager, the relevant Assistant Director and CAIS to recover the monies from the employee or service provider.

Please see the [Claims Compliance and Assurance Team procedure](#) for managing corrective action overpayments.

[Return to top of page](#) | [Return to top of section](#)

Considerations for recovering an overpayment

When an overpayment occurs and before recovery action is initiated, and the Debt Recovery Team will consider the following:

- the statute of limitations
- the cost effectiveness of recovery, and
- the ability of the employee to repay the debt.

These factors will be examined together with the cause of the overpayment to determine appropriate action.

Statute of limitations

A statute of limitations is legislation within each state and territory that sets the maximum time after an event that legal proceedings based on that event may be initiated. With regard to overpayments, the limitation period is the set time within which Comcare is able to recover overpayments in a court of competent jurisdiction as a debt owed to Comcare.

Where legal action is barred by the statute of limitations a debt is not able to be recovered successfully by civil action through the courts. If the statute of limitations applies and an overpayment is unable to be recovered, the Debt Recovery Team will pursue a waiver of the debt.

The limitation period in all states and territories is 6 years, except for the Northern Territory which has a limitation period of 3 years.

Cost Effectiveness

If all previous attempts at recovery have failed, the Debt Recovery Team will consider the cost effectiveness of the recovery process. If it is not economical to pursue recovery of a debt Comcare does not have to institute recovery proceedings.

If the costs associated with the recovery of a debt from a debtor are greater than the debt, recovery is not cost effective. If recovery is not cost effective, the debt recovery team may need to pursue the write-off of the debt, noting that the Debt Recovery team will make this recommendation to the General Manager.

Ability of the employee to repay

If an employee is overpaid, and depending on the size of the debt compared to the employee's weekly benefit or lump sum received, the Debt Recovery team may need to assess an employee's financial circumstances to decide:

- whether the debt should be recovered
- the rate of recovery, and
- whether a write off or waiver should be pursued

This is done by requesting the employee complete the [Statement of Financial Circumstances](#) form. When a Statement of Financial Circumstances form has been completed and returned, the Debt Recovery team must assess the amounts stated on the form to determine an appropriate repayment amount. Please note that the Debt Recovery team will undertake this process and communicate directly with the employee to make this assessment.

[Return to top of page](#) | [Return to top of section](#)