

Specific conditions and circumstances

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Conditions resulting from compensable medical treatment

As the claims manager you may receive notification from an employee that they wish to claim compensation for a condition that has occurred as a result of medical treatment obtained for a compensable condition.

- Section 4(3) of the SRC Act provides that if medical treatment is obtained for a compensable condition and results in another condition, this condition is deemed to be a new injury if: compensation was payable in respect of the condition for which the medical treatment was obtained, and
- it was reasonable for the employee to have obtained that medical treatment in the circumstances.

As there is a new injury and causative factor, the condition is dealt with as a new compensation claim.

Examples of conditions resulting from compensable medical treatment

The following are some examples:

- new injury as a result of medication for compensable condition:
 - an employee has an accepted claim for back sprain
 - compensation is payable for nurofen, an anti-inflammatory medication
 - as a result of this medication the employee develops stomach ulcers. The stomach ulcer is deemed to be a new injury and no employment test is required.
- new injury as a result of surgery for compensable condition:
 - an employee has an accepted claim for a broken ankle for which they undergo approved surgery
 - as a result of the surgery the employee develops Deep Vein Thrombosis (DVT). The DVT is considered to be a new injury.
- new injury as a result approved exercise program for compensable condition:
 - an employee has an accepted claim for medial meniscus tear in their right knee
 - they participate in a post-operative exercise program to rebuild the strength in their knee and to increase their range of movement
 - while performing an exercise the employee developed an inguinal hernia
 - the inguinal hernia is considered to be a new injury.

Third party proceedings for a new injury resulting from surgery for compensable condition

Third party damages proceedings may be instituted against another person or entity, or their representative (such as an insurance company) where it is considered the compensable condition has been caused, or contributed to, by normal duty of care processes not being fulfilled.

It is therefore important to consider an injury resulting from surgery as a new claim so costs can be attributed accurately in the case there is a third party proceeding.

Capturing potential third party proceedings

To capture potential third party proceedings, you will need to indicate 'Yes' this is a third-party claim at Question 29 in the NDS/TP/Journey tab of the Pracsys registration function even if the employee has not indicated that someone else was responsible for their injury.

In addition, when a claim is processed through i Claim, you will also need to indicate 'Yes' when asked is there a third party/common law indicator present.

Note: If you have questions or are unsure whether a claim has the potential to give rise to common law proceedings and a third-party recovery, you should discuss further with the Specialised Claims Team who manage third party recoveries.

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Locally engaged overseas employees

Commonwealth agencies may engage persons outside Australia, for employment outside Australia, to perform the duties of their employment outside Australia. They may be Australian or foreign nationals, and the foreign country where they are employed may or may not have a workers' compensation scheme or schemes.

These employees are known as Locally Engaged Overseas Employees (LEOEs) and they should be advised of their workers' compensation coverage by their employer.

Compensation for LEOEs may be undertaken through a locally-available scheme in force in the foreign country where they are employed or where no such scheme exists, under the SRC Act.

Compensation payable to locally engaged employees

Section 117(1) of the SRC Act provides that this section applies to a person who:

- is an employee within the definition provided by section 5 of the SRC Act
- is engaged outside Australia for employment outside Australia, and
- performs the duties of their employment outside Australia.

Note: Section 117 does not apply when an employee who was engaged outside Australia to work outside Australia performs the duties of their employment within Australia. If the person is working within Australia, and is an employee as defined under section 5 of the SRC Act, workers' compensation coverage will be determined under the usual provisions of the SRC Act.

Note: Section 117 also does not apply to employees hired in Australia who later travel or reside overseas in connection with their employment or employees who, while overseas on leave, are recalled to duty to perform specific tasks overseas. Such employees are covered by the general provisions of the SRC Act.

Where there is a local scheme in place that covers locally engaged overseas employees

Section 117(2) of the SRC Act specifies that where a LEOE is covered for compensation under a scheme of that country, no compensation is payable to that employee under the SRC Act.

Section 117(2) of the SRC Act refers to whether an employer makes contributions to the scheme in force in a foreign country. If an employer, for whatever reason, has chosen not to contribute to the overseas scheme, the LEOE will not be covered under the benefit provisions of the SRC Act.

Note: Comcare has no authority to reimburse an employer for any contributions paid to or liability payments made to a local compensation scheme.

Information to assist in the consideration of a scheme

The definition of a scheme in a particular country will vary from country to country and you will need to make it on a case-by-case basis based on information provided by the employer.

Before engaging an LEOE, the employer undertaking the recruitment should confirm the local employment-related laws, requirements and worker benefits and entitlements. Advice could be obtained from a local practicing lawyer, who unlike an Australian lawyer, is qualified to provide expert advice on local law and practice.

When an LEOE is injured, the employer should be able to provide you with details of:

- the employee
- the injury and circumstances in which it was suffered
- any scheme(s) for provision of benefits to injured workers that applies to the employee, other LEOEs, or employees of the foreign government. This information may be obtained from a local lawyer or the foreign government. If so, a copy of that advice or the name and contact details of the provider should be provided where possible.

Where this information is not provided, you should request this information under section 71 of the SRC Act.

Where a particular employee is not covered by the local scheme, but other classes of employees working for the same employer (the Commonwealth of Australia) are covered by the scheme

Section 117(3) of the SRC Act specifies that where a particular employee is not covered by the local scheme, but other classes of employees working for the same employer are covered by the scheme, the LEOE will be entitled to the compensation benefits that would be payable under the compensation scheme in the foreign country as if it applied to him or her.

Comcare must determine and pay those benefits in accordance with that compensation scheme. The LEOE is not entitled to any benefits under any other provision of the SRC Act.

Example: An employee who is a gardener at the Australian embassy in Samoa is injured. The local scheme does not provide coverage for gardeners but does provide coverage for kitchen workers. Comcare determines the claim and pays benefits as if the injured employee were a kitchen worker in the embassy.

Where employees of the Commonwealth of Australia are not covered at all by any local scheme, but there is a scheme in force for employees of the government of that country

Section 117(4) of the SRC Act specifies that where LEOEs are not covered at all by any local scheme, but there is a scheme in force for employees of the Government of that country, benefits will be determined by Comcare in accordance with the provisions of that scheme. The LEOE is not entitled to any benefits under any other provision of the SRC Act.

Employees working in countries where there is no local scheme

Section 117(5) of the SRC Act provides that no compensation is payable under the SRC Act to a LEOE where a local compensation scheme applies or is taken to apply to the employment.

In the rare situation of there being no local scheme or the ability to deem benefits under a government employees' scheme in that country, coverage and the usual provisions of the SRC Act will apply.

Note: Sections 117(2), (3) and (4) of the SRC Act provide for when a local compensation scheme applies or is taken to apply.

What is a scheme?

Section 117(6) of the SRC Act defines a compensation scheme as a scheme, whether constituted by law or not, for the provision of compensation benefits.

A scheme in force in the country where a LEOE is employed may be a national, state or private scheme and may for example:

- take the form of an insurance arrangement or a social welfare disability fund
- have exceptions or inclusions in respect of employees of other governments, but may also allow voluntary participation
- have age based exceptions or exclusions, which either operate as a total exclusion or exclude some benefits only.

Does the scheme in the country where a LEOE is employed need to be comparable to the Comcare scheme?

Section 117(2) of the SRC Act does not require that the relevant compensation scheme in the country the LEOE is employed be comparable to the Comcare scheme, for example there is no requirement that it be a 'no-fault' scheme or that it provides comparable benefits to the Comcare scheme.

What are benefits?

Section 117(6)(c) states that a reference to a benefit is a reference to compensation which is paid on the event of a person's death or incapacity 'in circumstances connected with their employment'.

If benefits are payable when a LEOE is injured or killed at work, the applicable scheme need not be one limited to workers' compensation. For example, New Zealand's compensation scheme compensates people who suffer injuries at work, even though the scheme is not exclusively connected to employment.

Note: If a scheme exists and either covers the employment of the LEOE or a class of similar LEOEs or at a minimum covers government employees, then the entitlements of the LEOE when carrying out their employment overseas are assessed under the foreign scheme. If it is found that an LEOE has no entitlement under the foreign scheme, then they cannot turn to the SRC Act as an alternative.

How are benefits determined?

Any incapacity benefits will be determined by the foreign country's compensation scheme administrators in accordance with the provisions of the compensation scheme (if any) of the foreign country. The amount and basis of these payments would be dependent upon the provisions of the foreign compensation scheme, e.g., the overseas scheme may have statutory rates/limits etc. Any such amounts would be likely to be paid on the basis of the overseas salary.

Medical expenses would also be paid in accordance with the provisions of the foreign country's compensation scheme. This would be likely to vary from place to place, ranging from a scheme having no provision for medical expenses, right through to schemes having medical expense arrangements similar to the SRC Act.

Note: If a LEOE claims for an injury or a specific benefit which would normally be covered under the SRC Act, but is not payable under the local scheme, then compensation cannot be paid.

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Hearing loss claims

Hearing loss relates to a reduced level of hearing. It can vary in degrees of severity, occur in all age groups and be reversible, temporary or permanent. Hearing loss can also occur suddenly or gradually, depending on the cause.

How is hearing loss assessed?

Hearing loss is assessed and measured using a variety of tests. The test results are plotted on a graph called an audiogram, which shows how loud sounds need to be before a person can hear them.

Hearing loss is measured in decibels (dB) and pitch in hertz (HZ). Decibels measure intensity and hertz measures frequency. The results of a hearing test indicate the degree and type of hearing loss.

Prior to any assessments, you may consider requesting the employee to complete the [Hearing loss questionnaire](#) form to obtain details on their employment, contribution, specific incident that resulted in employee's hearing loss.

Who assesses hearing loss?

Audiologists have expertise in all non-medical areas of hearing services including carrying out hearing loss assessments and rehabilitation of hearing impairments (which includes hearing aid prescription, fitting and management).

Audiologists are not legally qualified medical practitioners for the purposes of the SRC Act.

An ear, nose and throat specialist or otolaryngologist is a doctor who specialises in diagnosing and treating ear, nose and throat conditions. An ENT is an LQMP for the purposes of the SRC Act.

Is hearing loss an injury or disease under the SRC Act?

Hearing loss claims may be treated as an injury or disease for the purposes of the SRC Act depending on the cause of the hearing loss.

Acoustic trauma - assessed under the injury provisions of the SRC Act

Immediate permanent hearing loss can occur if an employee is exposed to very intense or explosive sounds. This type of damage is known as acoustic trauma.

Hearing loss resulting from acoustic trauma is most often an injury for the purposes of the SRC Act.

Noise induced hearing loss - assessed under the disease provisions of the SRC Act

Noise induced hearing loss occurs when hair cells in the cochlea of the inner ear are damaged due to long term exposure to excessive noise.

Disease provisions are applied to hearing loss claims that develop gradually and over time. Noise induced hearing loss is treated as a disease and section 7(4) of the SRC Act applied to determine the date of injury.

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Transitional Provisions

Transitional provisions apply to those claims with a date of injury prior to the commencement of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) on 1 December 1988.

Which Acts need to be considered in relation to transitional provisions?

According to section 123(A) of the SRC Act, where an injury is suffered prior to 1 December 1988, the reference to that injury applies to whichever of the following repealed Acts were in force on the date of injury.

- [Commonwealth Workmen's Compensation Act 1912](#) (the 1912 Act).
- [Commonwealth Employees' Compensation Act 1930](#) (the 1930 Act).

- [Compensation \(Commonwealth Government Employees\) Act 1971](#) (the 1971 Act).

The SRC Act also details how claims with a date of injury prior to 1 December 1988 should be managed in respect to transitional provisions - please see [Part X - Transitional provisions](#) - SRC Act 1988.

What are the exceptions under section 124?

The transitional provision provide the following: If the injury was compensable under the previous Act (e.g. the employee has a compensable injury as defined under the 1971 Act), the entitlements are payable as per the SRC Act provisions after 1 December 1988.

This is the case **except** where section 124 expressly states otherwise. Some of those expressly stated provisions include the following:

- Section 124(3) provides that Permanent Impairment and death benefits are not payable under the SRC Act if:
 - the person has already received compensation of a lump sum in respect of that impairment or death under a previous Act,
 - or
 - if they were not entitled to receive a lump sum payment for impairment or death under the previous Act.
- Section 124(4) provides that where impairment became permanent or death occurred prior to 1 December 1988, the amount payable is the amount that was payable under the previous Act.
- Section 124(5) provides that an employee is not entitled to compensation under section 29 prior to the commencement date of the SRC Act (1 December 1988). However they can apply for compensation under section 29 of the SRC Act after 1 December 1988, and the considerations under that section then apply.
- There is no subsection of 124 that deals with or qualifies the application of section 39. Generally, the same applications as section 29 will apply. That is, if the employee is entitled to compensation (generally) then they can apply for compensation under section 39 of the SRC Act after the commencement date (1 December 1988), and the considerations of that section will then apply.

Where can I find further information in relation to transitional provisions?

Please see:

- section 124 for further information on specific transitional provisions
- sections 131 -137 of the SRC Act for further information on the transitional provisions relating to incapacity payments.

If you have any questions in relation to transitional provisions, please discuss these with your Assistant Director.

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Claims arising out of the claim administration or rehabilitation process

The claim administration process includes actions undertaken by Comcare to assist with managing and determining claims for compensation. These actions can include, but are not limited to:

- investigating conflicting evidence
- requesting employees or employers provide information
- a claim being re-allocated to another Claims Manager
- investigating newly reported conditions
- requesting treating medical practitioners provide medical reports or copies of their clinical notes relevant to the claim
- requesting employees complete relevant forms
- arranging for an employee to attend a medical examination under section 57 of the SRC Act, and
- undertaking reviews to ensure an employee is receiving correct entitlements.

The rehabilitation process includes actions undertaken by a Rehabilitation Authority (RA) such as, arranging rehabilitation assessments and rehabilitation programs for injured employees.

New injuries may arise, or additional claims made for increased benefits on an existing claim, as a result of the claim administration or rehabilitation process. If this occurs you need to assess if there is:

- a new injury (or aggravation) that has been caused by the claim administration or rehabilitation process, or

- if there is no new injury (or aggravation), then you need to consider the claim for benefits in the usual manner under the appropriate head of compensation.

New injury/disease (or aggravation) arising out of the claim administration or rehabilitation process

Liability for a new condition or aggravation of an existing condition must be determined under section 14(1) of the SRC Act before any other benefits, such as medical treatment or incapacity, can be considered.

It is unlikely that actions undertaken by Comcare in managing a claim for compensation will be considered to be 'employment'. It is therefore likely that liability for a disease/aggravation of a disease that arose out of the claim administration process will be denied.

Ordinarily the rehabilitation process itself will not be 'employment'. However, any claim for a new injury will need to be assessed in the usual manner having regard to the specific circumstances of that claim.

Increase in treatment or incapacity on existing claims

Where an increase in treatment or incapacity occurs on an existing claim, and it is apparent that the cause of the increase may be due to the claim administration or rehabilitation process, you should first assess whether the employee has suffered a new condition, or an aggravation of a condition (a new 'injury' under section 5A of the SRC Act).

If there is a new injury or aggravation, liability for the new or aggravated condition must be determined under section 14 of the SRC Act.

If the employee has not sustained a new condition, or new aggravation of a condition, then the claim for benefits must be assessed in the usual manner against the existing claim. That is, medical treatment must be assessed under section 16 of the SRC Act to identify whether it is required as a result of a compensable injury, and incapacity must be assessed under section 19 of the SRC Act to identify whether the incapacity is 'as a result of' a compensable injury.

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Loss of or damage to property

Section 15 of the SRC Act provides compensation where an employee is involved in an accident arising out of and in the course of employment, which does not cause an injury but results in the loss of or damage to property used by the employee.

Definition of accident

The word 'accident' has not been defined in the SRC Act therefore we consider its ordinary meaning of an unexpected and unforeseen event, especially one resulting in damage or harm.

Section 15 is only relevant where an employee has an accident. It is not relevant where an employee has accidentally lost or damaged property.

Example: An employee leaves her spectacles on the desk. A box or container placed on them breaks the spectacles. Compensation is not payable because the damage did not result from an accident involving the employee.

Definition of property

Section 4 of the SRC Act defines 'property used by an employee' as 'an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance used by the employee'.

Examples of property that may be covered are:

- spectacles
- hearing aids
- prosthetics
- walking sticks/frames
- wheelchairs
- dentures
- artificial eyes
- other medical or surgical aids or appliances.

Out of and in the course of employment

For the purposes of Section 15 of the SRC Act, the accident has to result in loss or damage to an employee's property where:

- an employee is in the course of their employment, and
- there is a direct relationship between the undertaking of the duties of the employment and the accident.

Section 15, like most claims for compensation, must be accompanied by a certificate from a legally qualified medical practitioner in accordance with section 54(2)(b).

Note: Section 15(3) of the SRC precludes compensation if it is established that the loss or damage incurred by the employee has resulted from the serious and wilful misconduct of the employee.

Where an accident does not cause personal injury

Where an employee suffers a compensable injury during the accident, they are not entitled to compensation under section 15. This is because section 15 specifically states '... the accident does not cause injury to the employee ...'

If the employee suffers an injury during the accident, they can lodge a claim for the injury and liability can be considered under section 14(1) of the SRC Act.

Repair and replacement of property

Compensation is payable for costs reasonably incurred by an employee for the necessary replacement or repair of the property used by the employee. This means the replacement or repair of the property must be necessary, and the cost must be reasonable.

Such costs shall be taken to include any fees or charges paid or payable by the employee to a legally qualified medical practitioner, dentist or other qualified person for a:

- consultation
- examination
- prescription, or

- other service reasonably rendered in connection with the replacement or repair.

Note: There is no provision to pay compensation for time away from work while waiting for the broken or lost item to be repaired or replaced.

Assessing loss or damage to property claims

When assessing loss or damage to property claims, you will need to be satisfied that the:

- employee has had an accident
- accident arose out of and in the course of employment
- accident resulted in the loss of, or damage to, '*property used by an employee*'
- accident did not result in an injury to the employee, and
- loss or damage incurred by the employee was not as a result of the employee's misconduct.

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