

State compensation payable (section 119)

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Introduction

Section 119 of the SRC Act applies to an employee or deceased employee entitled to receive State compensation. An employee or deceased employee is not entitled to receive both State compensation and compensation under the SRC Act for the same injury.

If the employee claims compensation from Comcare and State compensation has been received for the same injury, Comcare is only liable for the amount in excess of the total received from State compensation.

If an employee has already received compensation under the SRC Act and then receives State compensation for the same injury, Comcare can recover the amount paid to the employee.

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State compensation definition and list of Acts

Section 119(7) of the SRC Act defines State compensation as compensation recoverable under a 'specified law'. Specified law is defined as a law of a State or Territory that provides for the payment of compensation, other than workers' compensation. A specified law is declared by the Minister, by legislative instrument, to be a specified law for the purposes of the SRC Act. The laws specified under s119 are those declared in Ministerial Notice number 1 of 2007.

This following lists details current specified Acts by State:

New South Wales

- *Compensation to Relatives Act of 1897*
- *Crimes Act 1990*

- *Damage by Aircraft Act 1952*
- *Civil Aviation (Carrier's Liability) Act 1967*
- *Sporting Injuries Insurance Act 1978*
- *Victims Support and Rehabilitation Act 1996*
- *Motor Accidents Act 1988*
- *Motor Accidents Compensation Act 1999*
- *Motor Accidents Compensation Act 2017*

Victoria

- *Civil Aviation (Carrier's Liability) Act 1961*
- *Victims of Crime Assistance Act 1996*
- *Transport Accident Act 1986*

Queensland

- *Criminal Code Act 1899*
- *Criminal Offence Victims Act 1995*

Western Australia

- *Criminal Code Act Compilation Act 1913*
- *Fatal Accidents Act 1959*
- *Civil Aviation (Carriers' Liability) Act 1961*
- *Damage by Aircraft Act 1964*
- *Criminal injuries Compensation Act 2003*

South Australia

- *Civil Aviation (Carriers' Liability) Act 1962*
- *Victims of Crime Act 2001*

Tasmania

- *Criminal Code Act 1924*
- *Fatal Accidents Act 1934*

- *Civil Aviation (Carriers' Liability) Act 1963*
- *Damage by Aircraft Act 1963*
- *Motor Accidents (Liabilities and Compensation) Act 1983*
- *Victims of Crime Assistance Act 1976*

Australian Capital Territory

- *Crimes Act 1900*
- *Victims of Crime (Financial Assistance) Act 1983*

Northern Territory

- *Compensation (Fatal Injuries) Act*
- *Motor Accidents (Compensation) Act*
- *Victims of Crime Assistance Act*

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Recovery by Comcare

Where an amount of compensation is recoverable by Comcare, the lesser of the following can be recovered:

- either the amount paid under the SRC Act, or
- the amount paid by the State compensation scheme

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Exceptions

Under section 119(5) Comcare is unable to recover compensation paid under the SRC Act for the benefit of a prescribed child (any weekly payments made under subsection 17(5)).

Under section 119(6), where a claimant establishes that all, or part, of the State compensation does not relate to the same injury, Comcare cannot recover that compensation.

Example: A Commonwealth employee is assaulted in the course of their employment and suffers a fractured arm. Comcare accepted liability for the injury sustained and the employee received compensation payments. After receiving compensation from Comcare, the employee was compensated under the Victims of Crime Assistance Act 1996 (VCA Act) in Victoria for the same injury. As the VCA Act is a specified law for the purposes of the SRC Act, Comcare is eligible to recover the lesser amount of compensation paid to the employee.

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