

# Third party and common law recoveries

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## Introduction

This section provides information about common law recoveries (third party recoveries).

The Specialised Claims Team (SCT) manages all actions related to the recovery of compensation from liable third party's under s48 of the SRC Act and provides instructions to the Legal team regarding recoveries under section 50. You should forward all recoveries related diary and document notifications (e.g. letters from insurers/ solicitors) to the SCT team in tray in Pracsys.

Any questions, or issues with t third party recoveries should be raised with the SCT

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## Third party recoveries

When an employee suffers a compensable injury as a result of an incident involving a third party, the employee is entitled to seek damages from the third party or Comcare may seek damages on their behalf.

Examples of circumstances giving rise to third party claims may include:

- Motor vehicle accidents where the other party is at fault. Example: An employee is rear ended in a motor vehicle accident while driving between offices.
- An employee slipping on a supermarket floor whilst shopping for their work social club (at the direction of their employer, during work hours).
- An employee being mauled by a dog whilst performing their duties. Example: A parking inspector or census worker.
- Injury as a result of machine malfunction.

- Medical negligence. Example: An employee's compensable condition has significantly worsened as a result of medical treatment for that condition.
- criminal injury. Example: An employee is assaulted whilst performing their duties.

Where a settlement is reached, there are implications for the future payment of any claims for compensation by Comcare.

Where an employee recovers damages from a third party, the employee is not entitled to any further compensation from the date of the settlement. Where Comcare recovers damages from a third party on an employee's behalf, the employee can receive further compensation from Comcare once they have exhausted the settlement amount. Sections 46 - 50 of the SRC Act are the provisions that deal with employee's and third party recoveries.

### **Section 48 third party recoveries**

If the employee elects to recover damages from a third party and successfully receives damages from the third party, they must reimburse Comcare for the expenses of the claim from date of injury to date of settlement from settlement funds. The employee has a responsibility to inform Comcare of any action they are taking against a third party and to inform Comcare within 28 days of any settlement reached.

The employee is not entitled to claim compensation from the date of settlement.

If you receive an account on a claim which has settled under section 48 of the SRC Act you must return the account to the employee.

### **Section 50 third party recoveries**

If the employee has elected not to pursue recovery of damages from a third party Comcare can choose to undertake recovery of damages in the employee's name. If the claim is successful.

Comcare will deduct a portion of the settlement to cover the expenses of the claim from date of injury to the date of settlement and the cost of any legal fees incurred by Comcare.

The remaining portion of the damages will be paid to the employee.

The employee is not eligible to claim compensation until such time as they can demonstrate that they have spent settlement monies on expenses related to their compensable condition that would have been payable had they been receiving compensation from Comcare.

These claims are managed by the Specialised Claims Team, until such time as Comcare is satisfied that the settlement funds have been spent on expenses reasonably required by their compensable condition. If there is any continuing liability past this point, the claim will be returned to the appropriate claims team for ongoing management.

If you receive an account on a claim which has settled under section 50 of the SRC Act, you should consult with your Assistant Director and the Specialised Claims Team to decide whether the claim needs to be transferred to the Specialised Claims Team

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