



DEFINITION OF MEDICAL TREATMENT— SUBSECTION 4(1) OF THE SRC ACT

PURPOSE

To provide scheme guidance to relevant authorities¹ and their claims managers on the definition of medical treatment in subsection 4(1) of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

BACKGROUND

Under subsection 16(1) of the SRC Act, once the relevant authority accepts a workers' compensation claim, it is liable to pay the cost of medical treatment that was reasonable to obtain in the circumstances.

Claims managers should consider all requirements of section 16 of the SRC Act when determining liability for medical treatment. Medical treatment requests are determined on their individual merit. The four essential statutory steps for claims managers to consider are:

1. Is the claimed service medical treatment?
2. If so, was it obtained in relation to the compensable injury?
3. If so, was the medical treatment reasonable for the employee to have obtained in the circumstances?
4. If so, what amount of compensation is appropriate to the medical treatment?

This guidance is about step 1—**determining if the claimed service meets the definition of medical treatment under the SRC Act**. Scheme guidance on step 3, if the treatment was reasonable to obtain², and step 4, on the appropriate compensation for treatment³ are also available.

This guidance clarifies the definition of medical treatment in subsection 4(1) of the SRC Act, and references case law that assists with understanding this definition.

Claims managers should refer to this guidance when considering an employee's request for medical treatment. If the claimed treatment does not satisfy the definition of medical treatment, then the request must be declined.

GUIDANCE

This guidance is non-binding and relevant authorities and their claims managers retain their discretion to determine whether a request for service meets the definition of medical treatment under the SRC Act.

Medical treatment may fall under one or more of the below meanings of medical treatment.

1 Relevant authority is defined in subsection 4(1) of the SRC Act. It is defined as either a licensee (in relation to an employee who is employed by a licensee) or Comcare (in relation to any other employee).
2 Scheme guidance—Applying the Clinical Framework to assess the reasonableness of medical treatment is available on the [Comcare website](#).
3 Scheme guidance—Appropriate cost of medical treatment is available on the [Comcare website](#).

(a) Medical or surgical treatment by, or under the supervision of, a legally qualified medical practitioner

A legally qualified medical practitioner (LQMP) is a general practitioner or specialist registered to practice with the Australian Health Practitioner Regulation Agency (AHPRA).

Services an LQMP can provide include, but are not limited to, the following:

- > diagnosis and treatment of disease, ailments, injuries, pain or other conditions
- > medical procedures including surgery
- > prescription of medication
- > work capacity certification.

The nature and extent of supervision is dependent on the type of the treatment. Some treatments may require close monitoring while others may be self-monitored. For example, a medical practitioner may recommend a gym program be developed under the supervision of an exercise physiologist. After the employee learns the techniques they may continue to exercise without close supervision.

Medical treatment does not include payment for reports related to treatment or progress updates. Claims managers may request information and pay for reports under section 70 (Comcare) or section 108F (licensees) of the SRC Act⁴.

Medical treatment does not include payment for non-attendance or cancellation fees where the employee has failed to attend an appointment for medical treatment as the employee did not receive treatment.

(b) Therapeutic treatment obtained at the direction of a legally qualified medical practitioner

'Therapeutic treatment' includes an examination, test or analysis for the purpose of diagnosing, or treatment given for the purpose of alleviating, an injury.

Therapeutic treatment does not have to cure an injury or disease, rather it may include palliative care.

Therapeutic treatment for the purposes of alleviating an injury may include treatment for alleviating pain associated with an injury. In *Comcare v Watson*⁵ the Federal Court noted that the ordinary dictionary meaning of 'alleviation' is defined as 'the action of lightening pain'. Therefore, treatment designed to alleviate the pain caused by an injury or disease could be regarded as therapeutic treatment.

Examples of therapeutic treatment include acupuncture or exercise as a form of medical treatment.

An activity under the direction of a LQMP does not automatically make it therapeutic. In *Thiele v Commonwealth*⁶, the Federal Court found that construction of a swimming pool under the instruction of a treating practitioner did not make it therapeutic. It does not become medical treatment merely because it is advised, prescribed or ordered by a LQMP. This may also apply to hobbies or recreational activities.

(c) Dental treatment by, or under the supervision of, a legally qualified dentist

A legally qualified dentist is registered with AHPRA.

A dentist provides or supervises a treatment and decides on the frequency and duration of that treatment.

⁴ Sections 70 and 108F of the SRC Act prescribe that Comcare or the licensee respectively have power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

⁵ *Re Comcare v Watson* (1997) FCA 0149 (11 March 1997)

⁶ *Re Thiele v Commonwealth* (1990) FCA 175 (20 April 1990)

(d) Therapeutic treatment by, or under the supervision of, a physiotherapist, osteopath, masseur or chiropractor registered under the law of a State or Territory providing for the registration of physiotherapists, osteopaths, masseurs or chiropractors

Treatment can be provided by, or under the supervision of, a registered physiotherapist, osteopath, masseur or chiropractor. However, claims managers will need to ensure an appropriately qualified person is providing the treatment.

Treatment providers must be qualified by their registration or training to provide the treatment specified. Even where the treatment itself may be therapeutic for the employee's compensable condition, it is important to consider if it is being provided by a person that is qualified to provide that treatment.

(e) An examination, test or analysis carried out on, or in relation to, an employee at the request or direction of a legally qualified medical practitioner or dentist, and the provision of a report in respect of such an examination, test or analysis

Examples of examinations, tests or analyses include, but are not limited to X-rays, MRI scans, blood tests, pathology tests, lung function tests and sleep studies. This provides for payment for reports related to an examination, test or analysis.

(f) The supply, replacement or repair of an artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance

This includes the cost of consultations and fittings of medical aids or appliances. Repair or replacement of aids or appliances due to loss, damage or expiry is also compensable.

Examples of medical aids or appliances also include hearing aids, crutches, orthopaedic shoes, wheelchair, corrective lenses and prosthesis.

If an aid or appliance does not meet the definition of medical treatment under this section, a claims manager may consider liability under section 39 (rehabilitation aids and appliances to maintain independence or assist with activities of daily living).

(g) Treatment and maintenance as a patient at a hospital

Examples of treatment and maintenance at a hospital include the following:

- > operative treatment
- > nursing services
- > day procedures
- > room charges
- > meals
- > anaesthesia.

Treatment may be obtained in a public or private hospital. This does not cover the cost of room upgrades or extras such as television hire or telephone calls.

(h) Nursing care, and the provision of medicines, medical and surgical supplies and curative apparatus, whether in a hospital or otherwise

Nursing care refers to care outside of the hospital setting such as nursing care in the home. Personal care is not nursing care and should be considered by reference to meaning of attendant care services in subsection 4(1) of the SRC Act. Scheme guidance about compensation for [attendant care services](#) provides the relevant considerations.

Medicines include prescription pharmaceuticals, non-prescription pharmaceuticals such as analgesics, supplements and topical creams.

Although it is not essential for a LQMP to prescribe non-pharmaceutical medication, Comcare suggests that a LQMP recommends any non-prescription pharmaceuticals. The costs of non-prescription pharmaceuticals and other products are compensable as long as they relate to the compensable injury.⁷

Examples of medical or surgical supplies include dressings, oxygen, syringes etc.

A curative apparatus assists in curing, slowing down, or preventing the deterioration of a medical condition. Examples include: exercise equipment for low back pain aimed at improving core strength; an implantable pain therapy device such as a spinal cord stimulator; a portable TENS machine recommended by a physiotherapist.

Purchase of a motor vehicle is unlikely to meet the definition of curative apparatus because it does not cure or treat an injury⁸.

(i) Any other form of treatment that is prescribed for the purposes of this definition

Any other form of treatment refers to that prescribed by the Minister under the SRC Regulations⁹. Under subsection (i), treatment may include therapeutic treatment by, or under the supervision of, any of the following persons:

- > an occupational therapist
- > an optometrist
- > a podiatrist
- > a psychologist
- > a speech therapist.

The above persons must be registered with AHPRA or a member of the relevant professional association.

NEXT STEPS

If a request for medical treatment meets the definition under the SRC Act, the remaining statutory steps can then be considered.

Please refer to scheme guidance on reasonableness and medical fees to ensure that treatment is evidence-based and of appropriate cost.

MORE INFORMATION

For more information, please contact Comcare's Scheme Policy and Design team on 1300 366 979 or email schemepolicyanddesign@comcare.gov.au.

⁷ Re Lambie and MRCC (2006) AATA 0534 (13 April 2006)

⁸ Re Heffernan v Comcare (2014) FCAFC 2

⁹ See section 17 of the [Safety, Rehabilitation and Compensation Regulations 2002](#).