

Commonwealth Workers' Compensation Explained

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The RTBU has a number of members covered under the Commonwealth Workers Compensation scheme (as opposed to the NSW compensation scheme).

The Commonwealth Scheme differs considerably from the NSW Scheme most notably in the entitlements available and the procedural requirements for processing a claim.'

What is Commonwealth Compensation?

A small proportion of workers in NSW are covered under a Commonwealth Workers Compensation Scheme, which operates under the Safety, Rehabilitation and Compensation Act 1988 (SRC Act).

Aside from Commonwealth public servants, there are a small number of corporations with employees covered by the Commonwealth Scheme. These include ARTC, Asciano and John Holland.

Each of these employees is a self-insurer for workers compensation purposes. Commonwealth employees have their claims managed by Comcare, which is, in effect, the workers compensation insurer to the Commonwealth Government.

In addition, Comcare does have some general functions, such as an occupation and health and safety inspector and the publication of medical guidelines for the assessment of permanent impairment.

(a) Types of Compensation

Once an employer has admitted liability for an injury, then compensation payable can take several forms:

(i) Medical and related expenses – payments at a cost of reasonable medical treatments for the injury

(ii) Weekly payments of compensation – compensation for loss of earnings when a work-related injury has meant the workers in unable to work, or has a reduced earning capacity;

(iii) Whole person impairment and non-economic loss – the sum is payable for the impairment and loss of quality of life sustained by an injured worker if their level of permanent impairment is assessed as being at least 10% of the relevant medical guide;

(iv) Household and attendant care services – services of a domestic nature (including cooking, house cleaning, laundry and gardening services) or for regular and essential personal care can also be payable.

(b) Calculation of weekly payments

Weekly payments of compensation to an injured worker may continue up to, but not beyond, 65 years of age. A worker's compensation entitlements are calculated according to their normal weekly earnings (NWE). Calculation of a worker's NWE can be complex and include some, but not all, overtime and allowances. If an injured worker is completely unfit for work, they are entitled to their full NWE for the first 45 weeks. If they continue to be incapacitated for work at the end of this period, they are then paid at 75% of their NWE.

How does the Commonwealth system work?

These are the procedural steps to lodge and process a compensation claim:

(a) **Claim** – An injured worker completes a Claim Form seeking compensation, and lodges it with their employer.

(b) **Determination** – The employer (or Comcare) then decides whether to accept the claim, and provides a written decision, including reasons as to why they have accepted or rejected the claim.

(c) **Reconsideration** – If a worker is dissatisfied with the original determination, they may seek a reconsideration by writing to the body that made the decision, seeking to have the decision reconsidered, and providing brief reasons as to why they are dissatisfied. Such a request must be made within 30 days of the receipt of the determination.

(d) **Review of decision** – If the worker is dissatisfied with the reconsideration, they can then file an Application for Review of the Decision with the Administrative Appeals Tribunal (AAT) within 60 days of receiving the decision. The Tribunal is an independent quasi-judicial body which will consider the Applicant Worker's claim afresh.

(e) **Administrative Appeals Tribunal (AAT)** – Any worker whose employ is covered under the Commonwealth system is entitled to apply to have their reconsideration reviewed by the AAT, but only after a reconsideration is issued. Issuing an application is free, however, cases do require preparation, which usually includes evidence from treating and qualified medical practitioners.

Traps and Trips

Unfortunately, the Commonwealth legislation does not provide prescribed time periods for the determination of a claim or reconsideration. This means that, after lodgement of a claim, an injured worker can be required to wait an unknown period for the determination of their claim.

The time periods for lodging a reconsideration and commencing proceedings in the AAT are usually strictly interpreted and, accordingly, it is essential that steps be taken to seek a reconsideration of a declined claim within 30 days or commence proceedings in the AAT within 60 days of an unsuccessful reconsideration application.

It is normally recommended that legal advice be sought in the following circumstances:

- Immediately after an unsuccessful determination made by an employer – this allows the solicitor to assist in preparing a reconsideration of the claim
- Immediately after an unsuccessful reconsideration – this allows a solicitor sufficient time to prepare documents for lodgement in the AAT; or
- Where the injured worker is likely to be left with a permanent injury or some level of ongoing incapacity

Conclusion

On one view, the Commonwealth workers compensation system is a supportive system for injured workers, noting that it entitles an injured worker to payments of lost earnings to age 65, and coverage for medical treatment expenses for life. Unfortunately, the process of lodging and determining a claim can be complicated and there are usually disputes associated with these types of claims. The administrative process of claims is complex and challenging and there is limited emphasis upon rehabilitation of injured workers.