

## **COMPENSATION AND REHABILITATION – SAFETY REHABILITATION AND COMPENSATION ACT 1988**

### **Introduction**

Most of us are well aware that we may have an entitlement to support under the *Veterans' Entitlements Act 1986*; however, many are likely to be less aware that they may have an entitlement under Commonwealth employees workers' compensation. So, in this article, I'll address some of the key provisions of the *Safety Rehabilitation and Compensation Act 1988* (SRCA).

### **What is SRCA?**

Up until 1 July 2004, when *MRCA 2004* replaced it for military personnel, *SRCA 1988* was the workers compensation legislation for all Commonwealth employees. DVA administers SRCA for eligible personnel (see below) on behalf of COMCARE. See MCS01 for an introduction to SRCA (To remind: open <[www.dva.gov.au](http://www.dva.gov.au)> on your web browser, look for table <Quick Links> on the right hand side of the DVA homepage, then open the <Factsheets> link, then open the window, scroll down to the factsheet you want to open and left click).

### **Would I be Covered by SRCA?**

You may be entitled to treatment, benefits and compensation under SRCA if you were injured or suffered disease or death on any of the following types of service up until to 30 June 2004 (the day before MRCA came into force):

- Peacetime Service (from 3 January 1949);
- Peacekeeping Service (from 7 December 1972);
- Hazardous Service (from 22 May 1986); or
- Operational Service (from 7 April 1994).

### **Who is Covered by SRCA and Administered by DVA?**

Those covered by SRCA and administered by DVA are:

- All members of the permanent ADF;
- All members of the ADF Reserve forces;
- Cadets and Officers and Instructors of Cadets; and
- Other people declared in writing by the Minister who:
  - hold an honorary rank in the ADF,
  - are members of a philanthropic organisation that provides services to the ADF, or
  - are undertaking Career Transition Training under an arrangement made by the ADF.

Please note, again, that you or your family may also be entitled to additional compensation under the *Defence Act 1903* in some cases of severe injury or compensable death.

## **Nature of SRCA Compensation**

*SRCA 1988* is 'no-fault' legislation. This means that if injured or ill from your service, you do not have to prove that the Commonwealth was negligent for your claim to be successful. On the balance of probabilities, however, it must be clear that your injury or disease **occurred in the course of your service**. Also, for a claim for a disease to be successful, you must show that your employment **contributed to a material degree** to your contracting or aggravating that disease.

## **When would I be Covered by SRCA?**

Although the following is not exhaustive, broadly, you are covered by SRCA:

- from the boundary of your normal place or residence, or place of temporary residence as a result of your employment;
- travelling to and from your place of residence along the most direct route to your place of employment;
- travelling between places of work;
- playing service sports when authorised in writing to be doing so;
- travelling to and from work to attend, and while attending, a place of education that is related to your service employment;
- if you suffer an injury or disease as an unintended consequence of medical treatment by the ADF; and
- if you suffer an injury or disease while you are undertaking defence approved Career Transition Assistance (viz, Resettlement) Training.

## **How are SRCA Claims Determined?**

As with claims under the VEA, each SRCA claim is determined by an official within the Department of Veterans' Affairs - individually, and on its merits.

If your worker's compensation claim is for an injury or disease or death on service during the pre-MRCA period, it will be administered under *SRCA 1988*.

Entitlements, however, have changed with the passage of its predecessor Acts (*Commonwealth Employees Compensation Act 1930*, *Commonwealth Employees Act 1930 Amended*, and *Commonwealth Government Employees Act 1971*). Therefore, depending on the time at which you were injured or suffered disease or death, the benefits flowing from a successful claim will vary.

## **How do Lodge a SRCA Claim?**

You can lodge a claim under SRCA with DVA using Form D2020, a copy of which can be downloaded from the DVA website through the <Forms> link. Note that (until DVA releases a single claim form for all Acts) the SRCA claim form requires that a separate D2020 be completed for each disease or injury and for death. See MCS13 for more details on how to claim under SRCA.

Let's now identify the benefits available through *SRCA 1988*.

## **What Information Do I Need?**

In addition to completing Form D2020, to fully support your claim you will need the following:

- proof of identity documentation;
- relevant service and service medical records, including your Enlistment Medical Board questionnaire and report;
- any injury report, an AC563 ADF OH&S Incident Report, and eye-witness reports completed at the time you were injured;
- copies of written orders or authorisations or directives related to your employment or activities at the time of injury, disease or death;
- where the injury, disease or death occurred away from your place of work, maps showing the shortest route between your place of work (or education or sporting venue, where applicable) and your home, and (if applicable) the route you took with an explanation of any variance;
- (if applicable) traffic accident report;
- your Discharge Medical Board report if you have been discharged;
- a statement describing how the injury, illness or death occurred and how your ADF service caused or contributed to your condition;
- details of post-discharge employment;
- any other medical reports, including civilian doctors/specialists reports, or other information that will help establish your entitlement to compensation.

### **SRCA 1988 Benefits**

The benefits available under SRCA where liability has been accepted by DVA are:

- compensation for loss of wages or allowances;
- lump sum payment in cases of permanent impairment;
- payment in the event of death;
- medical treatment;
- household services;
- attendant care services;
- rehabilitation and return to work support; and
- essential modifications, aids and appliances.

I'll now outline the SRCA benefits in a little more detail. In each case, the essential precursors are:

- your injury, disease or death occurred during a period of eligible service;

- you claim establishes a clear causal link between your injury, illness or death and your service;
- DVA accepts that the Commonwealth is liable for your injury, disease or death; and
- you have completed and returned to DVA a Needs Assessment proforma (see MRC34: for details on this process).

Once DVA has received your completed Needs Assessment and has calculated your entitlements, the delegate will seek a face-to-face or telephone interview to discuss your circumstances and needs in detail. This is an opportunity to ensure that the all issues and implications are clear to the delegate, so that his/her decision made is in full knowledge of your best interests. Time spent well here, can obviate the subsequent need for review.

#### *Loss of Wages or Allowances*

If you are unable to work because of your injury or illness, you may be eligible for weekly compensation benefits for the wages or allowances you have lost. The rate of compensation will be determined by the difference between what are now able to earn compared with what you were earning before your injury or illness. If you were receiving an allowance before, and lost as a result of the injury or illness, the loss of income from the allowance will be covered. See Factsheet MCS08 for more detail on this benefit.

#### *Lump Sum Payment for Permanent Impairment*

If the impairment you are suffering as a result of your injury or disease is permanent, under SRCA, instead of a pension, you will be entitled to a lump sum by way of compensation. The lump sum you receive will be a percentage of the legislated maximum payment. The maximum level of compensation is legislated and indexed in accordance with the CPI each 1 July. Currently, it is around \$155,000.

The percentage is determined by the “whole person” level of permanent impairment you are suffering. The “whole person impairment” concept provides that permanent impairment of any body part, system or function is compensable to the extent to which it permanently impairs you as a whole person. To this amount is added a non-economic loss component, which has a current maximum value of around \$55,000, making the maximum level of compensation for permanent impairment around \$210,000. An additional lumps sum (Severe Injury Adjustment) may be payable under the Defence Act 1903, in which case each of your dependent children will also receive a lump sum payment.

As an example, the loss of 50% of normal your capability as a whole person to perform a task would result in a lump sum payment of 50% of the legislated maximum. Note, however, that no lump sum is payable if your “whole person” impairment is not equal to or more than 10%, except where you have binaural hearing loss in which case the threshold is 5%.

The Guide to the Assessment of the Degree of Permanent Impairment is used to determine the lump sum payable under SRCA (for full details see:

<[http://www.comcare.gov.au/\\_\\_data/assets/pdf\\_file/0015/100905/PUB13\\_01248\\_June11\\_v12.pdf](http://www.comcare.gov.au/__data/assets/pdf_file/0015/100905/PUB13_01248_June11_v12.pdf)>). This document (the PIG as it is called colloquially) differentiates favourably between the rates of compensation payable to defence and non-defence Commonwealth employees. See also Factsheet MCS07.

#### *Payment for Death*

SRCA provides that your dependants may receive a lump sum payment if you die in compensable circumstances. The current level of payment under SRCA in event of death is

just under \$460,000 (an additional payment of around \$50,000 may be made under the *Defence Act 1903*). An additional lump sum (currently around \$75,000) and a weekly dependant child benefit (currently around \$126) are payable for each dependent child. Funeral expenses are also covered (currently around \$10,500) and, where a lump sum was payable under the *Defence Act 1903*, your dependants may receive payment for the cost of financial advice (currently around \$1500). See Attachment A to MCS06 for the rates payable in the event of death.

### *Medical Treatment*

Under SRCA the cost of medical treatment for injury or disease is different to VEA. Rather than the “scheduled fee” being paid, SRCA covers what are termed the “reasonable costs of medical treatment”. As some doctors and specialists will not attend to veterans under the VEA scheduled fee, potentially significant access to a wider range of medical expertise is opened by a successful claim under SRCA. It is important to note, however, that the process of having the cost of medical treatment under SRCA is also different. You will need to see your GP, ask him to refer you to a specialist for consultation and/or procedure **and** seek DVA approval for the consultation or procedure, before attending the appointment or having the procedure. See MRC46 for further information.

### *Household Services*

In some circumstances DVA will cover the costs you incur if you are unable to do because of your compensable injury or disease. Household services that DVA can cover with an additional payment include cooking, house-keeping, gardening and laundry. More details are to be found at MRC42.

### *Attendant Care Services*

Where attendant care services are reasonably required because of your compensable injury or illness, DVA will cover the cost of the expenses you have incurred. Again, this payment is additional to any other compensation you may be receiving under SRCA. Factsheet MRC41 provides further detail.

### *Rehabilitation and Return to Work*

If your injury or illness prevents you continuing to do the same work as before, DVA will assist you return to some other work within your capabilities. This is termed vocational rehabilitation. It may be accompanied by medical and social (or quality of life) rehabilitation. If DVA considers rehabilitation is necessary, it will arrange assessment and identification of the type of rehabilitation that is appropriate for you. DVA will cover all costs of the rehabilitation program, as well as paying weekly compensation benefits for the duration of the program. See MCS12 for more information.

### *Essential Modifications, Aids and Appliances*

If your compensable injury or illness necessitates modification of your home, workplace or motor vehicle, DVA will assess what modifications are required and will cover their costs. The costs of purchase, repair or replacement of aids and appliances that you need as a result of your injury or illness will also be covered.

### **Subsequent Information**

Typically, DVA will require you to complete annually a review of compensation arrangements that will involve a medical examination and medical certificates, as well as confirmation of your contact details, employment and income that may affect your fortnightly payments. There may therefore be, unlike VEA benefits, ongoing contact with DVA when in receipt of compensation under SRCA.

### **Effect of Other Benefits on SRCA Compensation**

You will recall from my introductory article in the Autumn *Wings* that you cannot “double dip”. In other words, if you claim for the same injury or illness under both VEA and SRCA and DVA accepts both claims, DVA will offset SRCA benefits against any similar benefits which may be payable to you under the VEA. Similarly, any DFRDB or MSBA benefits you are receiving will be taken into account by DVA when it calculates your weekly incapacity for week benefits under SRCA. See Factsheets MCS02 and DP82 for more details.

### ***Rights of Review***

If you disagree with a decision or the reasons given for a decision, or have more evidence in support of your claim, you may request review within 30 days of receipt of the decision. The issues about which you might seek reconsideration include DVA's:

- initial determination of liability;
- determination of entitlement to weekly incapacity for work benefits;
- permanent impairment compensation payments;
- payment of medical expenses;
- payment for the costs of modification to your home, car or workplace;
- payment for household and attendant care services; and
- provision of rehabilitation services.

MCS14 has more details on your right of review.

If you are not satisfied with the outcome of DVA's reconsideration, you may appeal to the AAT. You have 60 days after receipt of the review findings to lodge your appeal. See DP68 for more information on appealing to the AAT.

Beyond the AAT, only points of law can be appealed. The Federal Court will convene in the first instance as a single judge and, at the next level of appeal, the Full Court comprising three judges. If *special leave* is granted, the final level of appeal is the High Court of Australia.

Although you may seek the support of a non-legally qualified Advocate to represent you at the AAT, you may be well advised to appoint a solicitor. You will certainly need the support of a barrister to present a case to the Federal Court. Subject to means testing, you may be entitled to Legal Aid should you appoint a solicitor and/or barrister

### **Conclusion**

This article<sup>1</sup> has introduced some of the key considerations and entitlements for which you or your dependents might be eligible under the SRCA in the event of your injury, disease or death being service-caused.

Clearly, therefore, this article is an overview – the complexity of pre-MRCA Commonwealth workers' compensation does not allow all the provisions that relate to your circumstances to be covered in a short article. At the risk of harping, before starting to prepare a claim under SRCA, I strongly advise that you seek the support of a SRCA-trained and authorised

---

<sup>1</sup> This article has been prepared by R. N. (Dick) Kelloway, Pension Officer and Advocate.

Pension Officer. Your Division Secretary or Welfare Officer can help you locate a practitioner.

In the Autumn 2012 *Wings*, I will outline the key provisions of the *Military Rehabilitation and Compensation Act 2004* (MRCA).

December 2011