



MEMBER UPDATE

AFPA Industrial Dispatch #33

24 August 2018

Welcome to edition 33 of the AFPA Industrial Dispatch, a regular bulletin from the Legal and Industrial Team to keep our members up to date with significant industrial issues.

CURRENT SIGNIFICANT ISSUES

No “double dipping” – Comcare and other compensation

Usually, but not in all cases, if an AFP employee is injured at work the most appropriate compensation will be under the *Safety, Rehabilitation and Compensation Act 1988* (“SRC Act”) administered by Comcare for workers compensation. However, it is often the case that an AFP employee may have multiple compensation schemes available to them following an injury at work. This is because workplace injuries occasionally arise as a result of the actions of an offender or because of a motor vehicle accident, which will entitle employees in most cases to access compensation schemes relevant to those types of incidents. It is very important that you seek advice prior to making a claim for Comcare or compensation under any other scheme as such claims could adversely impact on you and your long-term recovery and treatment.

Each different scheme has different entitlements to compensation and it may be easier to qualify for compensation under one scheme than another. For instance, the threshold to access lump sum non-economic compensation is far easier under victims of crime legislation than it is under SRC Act. Similarly, some schemes are much more favourable than others depending on the nature of the injury/disease someone suffered, the severity of the injury and the prognosis for the injury. It is also the case that while one compensation scheme may be available at a certain time, it may not always be able to be accessed at a later point if there is an aggravation of an injury.

We recently assisted a member who suffered a physical injury while arresting an offender a number of years ago. The member, at the time, did not require a significant amount of time or treatment, and was covered by the AFP early intervention program for associated losses. Because of this he did not seek to make a Comcare claim. He was advised by his specialist that the injury would likely require surgery some time in the future. Some months after the injury, he made a claim under victims of crime scheme for a pain and suffering payment as a result of the injury (non-economic loss). He was compensated approximately \$8,000.00. At the time of receiving the compensation he had never made a Comcare claim and, even if he had, he would not have been entitled to pain and suffering (non-economic loss) under the SRC Act as that system is much more stringent than the victims of crime scheme.

A number of years after receiving the compensation, the member suffered an aggravation of his injury. The aggravation resulted in an extensive period off work and he was advised he required surgery. As he had not made a Comcare claim, he was required to then go through the Comcare process at that time as it was the only available compensation to him in order to seek payment of treatment costs and incapacity payments while off work. After some delay Comcare accepted his claim but advised him that they would offset the \$8,000.00 paid to him under

the victims of crime scheme as they were entitled to do this under the SRC Act. Despite the member requiring compensation for economic loss (i.e. treatment costs and missed work) from Comcare, the SRC Act allows Comcare to offset any compensation from another scheme as against compensation it is required to pay. The idea of this is not to allow people to “double dip” compensation.

This, of course, has caused problems for our member as he was without pay for an extensive period of time as Comcare said it offset owed incapacity payments as against the \$8,000.00. It also has caused logistical problems with re-crediting of leave as he was required to use his leave while his Comcare claim was being determined. Comcare will usually, following an acceptance of liability, arrange with the AFP the re-crediting of leave. However, because Comcare said it did not owe the member anything because of the offset, the member has now run into problems with having leave he took due to his injury being re-credited to him.

It also remains to be seen whether the victims of crimes authority will seek to chase the member if and when he attempts to receive compensation for non-economic loss under the SRC Act. There is significant uncertainty about this as Comcare and the government department responsible for victims of crime giving contradictory advice this issue.

It is important that members seek advice prior to making a claim under any compensation scheme, particularly if it is likely to jeopardise or complicate any future compensation you may require for an injury. If you wish to speak about this article or have any questions about a workplace injury, please contact Matthew Peterson at matthew.peterson@afpa.org.au or one of our industrial officers.

Superannuation Advice

The Legal and Industrial Team consists of lawyers and industrial officers who can best assist members with legal and industrial issues.

Superannuation, taxation and financial planning are complex and require specialist and expert advice. In these cases, we recommend that you seek advice from experts in those fields.

The Commonwealth Superannuation Corporation provides superannuation services to Australian Government employees, including financial planning advice:

<https://www.csc.gov.au/Members/Advice-and-resources/>

Alternatively, individual schemes also provide advice services.

The Superannuation Complaints Tribunal is also available to resolve disputes. More information is available at <http://www.sct.gov.au/>.

Campaign to film Police

The AFPA have recently been made aware of a nationwide campaign which encourages members of the community to film their interactions with Police. Sworn officers should not allow this to deter them from performing their duties effectively, however it is important to be mindful of your behaviour when dealing with the public.

Viral campaigns such as these tend to exaggerate and take seemingly innocuous interactions out of context, particularly when shared on social media.

Legal and Industrial Team Response Times

The Legal and Industrial Team aim to initiate contact with members who make enquiries within 48 hours. Upon first contact, we provide members with an “Authority to Act” form to sign. This allows us to make representations to the AFP or external agencies on the members’ behalf.

We triage and prioritise cases according to urgency. If you require urgent assistance, it is important to let us know in your first phone call or email, so we can prioritise accordingly.

Resolution of your matter will depend on its priority and complexity, however please let us know if you have any particular concerns. We will do our best to accommodate your needs.

INDUSTRIAL QUERIES

If you have any industrial queries or queries about issues raised in this Dispatch, please contact Sharon, Anish, Matt or Sam at afpa@afpa.org.au or call us on (02) 6285 1677.



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