SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

QUESTIONS ON NOTICE
BUDGET ESTIMATES 2009-10

Outcome/Agency ***Comcare***

DEEWR Question No. EW0036_10

Senator Siewart asked on 2 June in writing

Question

Normal weekly earnings

How is the objective in the SRC Act to provide 75 per cent of normal weekly earnings reconciled with persons receiving benefits under section 21 of less than 50 per cent?

Answer

Comcare has provided the following response:

Section 19 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) provides injured employees, who are incapacitated, with weekly benefits equivalent to 100 per cent of their normal weekly earnings (NWE), less actual earnings, for the first 45 weeks of incapacity.

After 45 weeks, the SRC Act provides weekly benefits equivalent to 75 per cent of NWE, if necessary, to retirement age. As an incentive to return to any work, it also provides higher percentage amounts for partial return to work, eg if an employee can work more than 25 per cent of previous hours, benefits are paid at NWE times 85 per cent, less actual earnings.

It is usual for superannuation funds, despite the level that the employee elects to contribute prior to injury, to require a 5 per cent employee contribution to the fund while the employee is on long term workers' compensation benefits. This means that the employee's 'available' or take-home weekly benefit is 70 per cent gross of their NWE.

For incapacitated employees who are in receipt of a superannuation benefit (ie retired employees), whether that be a weekly superannuation pension, a lump sum or a combination of both, sections 20, 21 and 21A of the SRC Act provide for the same 70 per cent 'take-home weekly benefit' outcome. This outcome is a result of the *combination* of the superannuation weekly benefit, or deemed weekly benefit from the lump sum, *and* the compensation weekly benefit, minus 5 per cent of NWE, and less any actual earnings.

This was the intention of the legislation as expressed by Minister Howe in his 1988 second reading speech to the Comcare Bill:

> *This Bill will seek to reduce the unreasonable costs associated with work-related injuries by introducing measures* ***to prevent double dipping*** *by employees using sick leave or superannuation payments while on compensation. For example, many employees who have been retired on invalidity grounds under the current legislation enjoy benefits under both compensation and superannuation schemes at a rate considerably in excess of their previous income. (emphasis added)*

This can be illustrated by an example:
Retired employee, Ms Y, had a NWE of $1,000/week and had received a government financed component of her superannuation lump sum of $150,000 and remains incapacitated under the SRC Act. Her weekly benefit is worked out using the sub-section 21(3) formula of:

$$\text{Amount of compensation} - \left(\text{Weekly interest on the lump sum} + \text{5\% of the employee's normal weekly earnings}\right)$$

where:

amount of compensation means the amount of compensation that would have been payable to the employee for a week if:

(a) section 19, other than subsection 19(6), had applied to the employee; and
(b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the week were a week referred to in subsection 19(3).

weekly interest on the lump sum means the amount worked out by:

(a) multiplying the superannuation amount in relation to the lump sum benefit received by the employee by the rate specified in an instrument made under subsection (5)*; and
(b) dividing the result of paragraph (a) by 52.

In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use "SC" instead of "5 per cent of the employee's normal weekly earnings". For this purpose:

SC means the amount of superannuation contributions that the employee would have been required to pay in that week if he or she were still contributing to the superannuation scheme.

* Note: the rate from 1 July 2009 has been specified as 5.35 per cent

Working the above example amounts into the subsection 21(3) formula, gives:-

75 per cent of NWE less [$150,000 x 5.35 per cent divided by 52 + 5 per cent of $1,000]

= $750 - [$154.33 + $50]

= $545.67

The workers' compensation weekly benefit of $545.67 is just over 50 per cent of Ms Y's normal weekly earnings. However, the combination of the deemed weekly earnings from her superannuation lump sum of $154.33 per week plus the 5 per cent of her weekly earnings of $1,000 ($50) she would have been required to contribute to her superannuation fund each week gives her an equivalent of $750 or 75 per cent of her normal weekly earnings. This is the same amount she would have received had she not retired but remained incapacitated.