



Comcare and Seacare Legislation Amendment (Pension Age and Catastrophic Injury) Act 2017

No. 48, 2017

**An Act to amend the law relating to the Comcare
scheme and the Seacare scheme, and for other
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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**An Act to amend the law relating to the Comcare
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[Assented to 22 June 2017]

The Parliament of Australia enacts:

No. 48, 2017

*Comcare and Seacare Legislation Amendment (Pension Age and
Catastrophic Injury) Act 2017*

1

1 Short title

This Act is the *Comcare and Seacare Legislation Amendment (Pension Age and Catastrophic Injury) Act 2017*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	22 June 2017
2. Schedule 1, Part 1, Division 1	The day after this Act receives the Royal Assent.	23 June 2017
3. Schedule 1, Part 1, Division 2	1 July 2017.	1 July 2017
4. Schedule 1, Part 2, Division 1	The day after this Act receives the Royal Assent.	23 June 2017
5. Schedule 1, Part 2, Division 2	1 July 2017.	1 July 2017
6. Schedule 2, Part 1, Division 1	The day after this Act receives the Royal Assent.	23 June 2017
7. Schedule 2, Part 1, Division 2	1 July 2017.	1 July 2017
8. Schedule 2, Part 2, Division 1	The day after this Act receives the Royal Assent.	23 June 2017
9. Schedule 2, Part 2, Division 2	1 July 2017.	1 July 2017
10. Schedule 2, Part 3	The day after this Act receives the Royal Assent.	23 June 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Comcare scheme

Division 1—Catastrophic injury

Safety, Rehabilitation and Compensation Act 1988

1 Subsection 4(1)

Insert:

catastrophic injury means an injury, where the conditions specified in the legislative rules are satisfied.

legislative rules means rules made under section 122A.

2 Subsection 29 (heading)

Repeal the heading, substitute:

29 Compensation for household services and attendant care services obtained as a result of a non-catastrophic injury

3 Subsections 29(1) and (3)

After “injury”, insert “(other than a catastrophic injury)”.

4 After section 29

Insert:

29A Compensation for household services and attendant care services obtained as a result of a catastrophic injury

Household services

- (1) If, as a result of a catastrophic injury to an employee, the employee obtains household services that he or she reasonably requires, Comcare is liable to pay compensation of such amount per week as Comcare considers reasonable in the circumstances.

- (2) Without limiting the matters that Comcare may take into account in determining the household services that are reasonably required in a particular case, Comcare must, in making such a determination, have regard to the following matters:
- (a) the extent to which household services were provided by the employee before the date of the catastrophic injury and the extent to which he or she is able to provide those services after that date;
 - (b) the number of persons living with the employee as members of his or her household, their ages and their need for household services;
 - (c) the extent to which household services were provided by the persons referred to in paragraph (b) before the catastrophic injury;
 - (d) the extent to which the persons referred to in paragraph (b), or any other members of the employee's family, might reasonably be expected to provide household services for themselves and for the employee after the catastrophic injury;
 - (e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).

Note: In relation to paragraph (2)(d), see also subsection 4(2).

Attendant care services

- (3) If, as a result of a catastrophic injury to an employee, the employee obtains attendant care services that he or she reasonably requires, Comcare is liable to pay compensation of such amount per week as Comcare considers reasonable in the circumstances.
- (4) Without limiting the matters that Comcare may take into account in determining the attendant care services that are reasonably required in a particular case, Comcare must, in making such a determination, have regard to the following matters:
- (a) the nature of the employee's catastrophic injury and the degree to which that injury impairs his or her ability to provide for his or her personal care;
 - (b) the extent to which any medical service or nursing care received by the employee provides for his or her essential and regular personal care;

- (c) the extent to which it is reasonable to meet any wish by the employee to live outside an institution;
- (d) the extent to which attendant care services are necessary to enable the employee to undertake or continue employment;
- (e) any assessment made in relation to the rehabilitation of the employee;
- (f) the extent to which a relative of the employee might reasonably be expected to provide attendant care services.

Note: In relation to paragraph (4)(f), see also subsection 4(2).

Recipient of compensation

- (5) An amount of compensation payable by Comcare under subsection (1) or (3) is payable:
 - (a) if the employee has paid for the household services or attendant care services, as the case may be—to the employee; or
 - (b) in any other case—to the person who provided those services.
- (6) If Comcare pays an amount under subsection (1) or (3) to a person who provided household services or attendant care services to an employee, the payment of the amount is, to the extent of the payment, a discharge of the liability of the employee to pay for those services.

5 Subsection 60(1) (definition of *determination*)

After “29,” insert “29A,”.

6 At the end of Part IX

Add:

122A Legislative rules

- (1) The Minister may, by legislative instrument, make rules (*legislative rules*) prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the legislative rules; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the legislative rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

Division 2—Pension age

Safety, Rehabilitation and Compensation Act 1988

7 Subsection 4(1) (definition of *employee*)

Omit “, and also applies to persons 65 years of age or older”.

8 Subsection 4(1)

Insert:

pension age has the meaning given by subsection 23(5A), (5B), (5C) or (5D) of the *Social Security Act 1991*.

9 Subsection 23(1)

Omit “65”, substitute “pension age”.

10 Subsections 23(1A) and (1B)

Omit “63 suffers an injury (whether before or after the commencement of this subsection)”, substitute “the age that is 2 years before pension age suffers an injury”.

11 Subsection 30(3) (paragraph (a) of the definition of *number of days*)

Repeal the paragraph, substitute:

- (a) if the employee is injured before reaching the age that is 2 years before pension age—on the day immediately before the day on which the employee reaches pension age; and

12 Subsection 30(3) (paragraph (b) of the definition of *number of days*)

Omit “63 years of age”, substitute “the age that is 2 years before pension age”.

13 Section 134 (heading)

Repeal the heading, substitute:

134 Reduction of compensation on reaching pension age

14 Subsection 134(1)

Repeal the subsection, substitute:

- (1) When a former employee to whom section 131, 132 or 132A applies reaches pension age, the amount of compensation payable per week to the former employee but for this section must be reduced by an amount calculated under the formula:

$$\frac{5 \times (\text{Pension age} - \text{Age as at commencing day})}{100} \times \text{Amount of weekly compensation}$$

where:

age as at commencing day means the age of the former employee, expressed in completed years, as at the commencing day.

amount of weekly compensation means that amount of compensation payable per week to the former employee.

15 Subsection 137(5) (definition of *number of days*)

Omit “65 years of age”, substitute “pension age”.

Part 2—Seacare scheme

Division 1—Catastrophic injury

Seafarers Rehabilitation and Compensation Act 1992

16 Section 3

Insert:

catastrophic injury means an injury, where the conditions specified in the legislative rules are satisfied.

legislative rules means rules made under section 144.

17 Section 43 (heading)

Repeal the heading, substitute:

43 Compensation for household services and attendant care services obtained as a result of a non-catastrophic injury

18 Subsections 43(1) and (4)

After “injury”, insert “(other than a catastrophic injury)”.

19 At the end of Division 5 of Part 2

Add:

43A Compensation for household services and attendant care services obtained as a result of a catastrophic injury

Household services

- (1) If, as a result of a catastrophic injury to an employee, the employee obtains household services that he or she reasonably requires, compensation is payable at the rate of such amount per week as is reasonable in the circumstances.
- (2) Without limiting the matters that may be taken into account in determining the household services that are reasonably required in

a particular case, the employer must have regard to the following matters:

- (a) the extent to which household services were provided by the employee before the date of the catastrophic injury and the extent to which he or she is able to provide those services after that date;
- (b) the number of persons living with the employee as members of his or her household, their ages and their need for household services;
- (c) the extent to which household services were provided by the persons referred to in paragraph (b) before the catastrophic injury;
- (d) the extent to which the persons referred to in paragraph (b), or any other members of the employee's family, might reasonably be expected to provide household services for themselves and for the employee after the catastrophic injury;
- (e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).

Note: In relation to paragraph (2)(d), see also section 16.

Attendant care services

- (3) If, as a result of a catastrophic injury to an employee, the employee obtains attendant care services that he or she reasonably requires, compensation is payable at the rate of such amount per week as is reasonable in the circumstances.
- (4) Without limiting the matters that may be taken into account in determining the attendant care services that are reasonably required in a particular case, the employer must have regard to the following matters:
 - (a) the nature of the employee's catastrophic injury and the degree to which that injury impairs the employee's ability to provide for his or her personal care;
 - (b) the extent to which any medical service or nursing care received by the employee provides for his or her essential and regular personal care;
 - (c) the extent to which it is reasonable to meet any wish by the employee to live outside an institution;

- (d) the extent to which attendant care services are necessary to enable the employee to undertake or continue employment;
- (e) any assessment made in relation to the rehabilitation of the employee;
- (f) the extent to which a relative of the employee might reasonably be expected to provide attendant care services.

Note: In relation to paragraph (4)(f), see also section 16.

Recipient of compensation

- (5) An amount of compensation payable under subsection (1) or (3) is payable:
 - (a) if the employee has paid for the household services or attendant care services, as the case may be—to the employee; or
 - (b) in any other case—to the person who provided those services.
- (6) If an amount of compensation is paid under subsection (1) or (3) to a person who provided household services or attendant care services to an employee, the payment of the amount is, to the extent of the payment, a discharge of the liability of the employee to pay for those services.

20 Subsection 76(1) (definition of *determination*)

After “43,”, insert “43A,”.

21 At the end of Part 9

Add:

144 Legislative rules

- (1) The Minister may, by legislative instrument, make rules (*legislative rules*) prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the legislative rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the legislative rules may not do the following:

- (a) create an offence or civil penalty;
- (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
- (c) impose a tax;
- (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
- (e) directly amend the text of this Act.

Division 2—Pension age

Seafarers Rehabilitation and Compensation Act 1992

22 Section 3

Insert:

pension age has the meaning given by subsection 23(5A), (5B), (5C) or (5D) of the *Social Security Act 1991*.

23 Subsections 38(1) and (2)

Repeal the subsections, substitute:

- (1) Compensation is not payable under this Division to an employee who has reached pension age.
- (2) However, if an employee who has reached the age that is one year before pension age suffers an injury:
 - (a) subsection (1) does not apply; and
 - (b) compensation is payable under this Division in respect of the injury:
 - (i) to the extent that this Act (other than subsection (1)) allows; and
 - (ii) for a maximum of 52 weeks (whether consecutive or not) during which the employee is incapacitated.

24 Subsection 44(2) (definition of ^y [number of years])

Repeal the definition, substitute:

^y **[number of years]** means the number (calculated to 3 decimal places) worked out by dividing by 365 the number of days in the period beginning on the day after the date of the determination and:

- (a) if the employee is injured before reaching the age that is 2 years before pension age—ending on the day immediately before the day on which the employee reaches pension age; and
- (b) if the employee is injured on or after reaching the age that is 2 years before pension age—ending on the day immediately before the employee would cease to be entitled to receive compensation under section 31, 33, 34, 35 or 36.

Schedule 2—Application and transitional provisions

Part 1—Comcare scheme

Division 1—Catastrophic injury

1 Application—catastrophic injury

- (1) The amendments of section 29 of the *Safety, Rehabilitation and Compensation Act 1988* made by this Act apply in relation to compensation in respect of a week beginning after the commencement of the first legislative rules made for the purposes of the definition of ***catastrophic injury*** in subsection 4(1) of that Act (as amended by this Act).
- (2) Section 29A of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act) applies in relation to compensation in respect of a week that begins after the commencement of the first legislative rules made for the purposes of the definition of ***catastrophic injury*** in subsection 4(1) of that Act (as amended by this Act).

Division 2—Pension age

2 Application—pension age

- (1) The amendments of sections 23 and 134 of the *Safety, Rehabilitation and Compensation Act 1988* made by this Act apply in relation to a payment of compensation in respect of a week that began after the commencement of this item.
- (2) However:
 - (a) in the case of an employee who suffered an injury before the commencement of this item, subitem (1) does not prevent a week from being counted for the purposes of subparagraph 23(1A)(b)(ii) of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act) even if the week began before the commencement of this item; and
 - (b) in the case of a Parliamentary Service employee who suffered an injury before the commencement of this item, subitem (1)

does not prevent a week from being counted for the purposes of subparagraph 23(1B)(b)(ii) of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act) even if the week began before the commencement of this item.

(3) If:

- (a) an employee suffered an injury before the commencement of this item; and
- (b) compensation is payable under section 19, 20, 21, 21A or 22 of the *Safety, Rehabilitation and Compensation Act 1988* in respect of the injury for 104 weeks (whether consecutive or not) during which the employee is incapacitated; and
- (c) the last of those weeks (the ***final payment week***) ends before the employee reaches pension age (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act));

subsection 23(1A) of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act) has effect, in relation to the injury, as if the number of weeks mentioned in subparagraph (b)(ii) of that subsection were increased by the number of weeks in the period:

- (d) beginning immediately after the end of the final payment week; and
- (e) ending immediately before the employee reaches pension age (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act)).

(4) If:

- (a) a Parliamentary Service employee suffered an injury before the commencement of this item; and
- (b) compensation is payable under section 19, 20, 21, 21A or 22 of the *Safety, Rehabilitation and Compensation Act 1988* in respect of the injury for 104 weeks (whether consecutive or not) during which the employee is incapacitated; and
- (c) the last of those weeks (the ***final payment week***) ends before the employee reaches pension age (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act));

Schedule 2 Application and transitional provisions

Part 1 Comcare scheme

subsection 23(1B) of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act) has effect, in relation to the injury, as if the number of weeks mentioned in subparagraph (b)(ii) of that subsection were increased by the number of weeks in the period:

- (d) beginning immediately after the end of the final payment week; and
 - (e) ending immediately before the employee reaches pension age (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (as amended by this Act)).
- (5) The amendment of section 137 of the *Safety, Rehabilitation and Compensation Act 1988* made by this Act applies in relation to a determination made by the relevant authority after the commencement of this item.

Part 2—Seacare scheme

Division 1—Catastrophic injury

3 Application—catastrophic injury

- (1) The amendments of section 43 of the *Seafarers Rehabilitation and Compensation Act 1992* made by this Act apply in relation to compensation in respect of a week beginning after the commencement of the first legislative rules made for the purposes of the definition of *catastrophic injury* in section 3 of that Act (as amended by this Act).
- (2) Section 43A of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act) applies in relation to compensation in respect of a week that begins after the commencement of the first legislative rules made for the purposes of the definition of *catastrophic injury* in section 3 of that Act (as amended by this Act).

Division 2—Pension age

4 Application—pension age

- (1) The amendments of section 38 of the *Seafarers Rehabilitation and Compensation Act 1992* made by this Act apply in relation to a payment of compensation in respect of a week that began after the commencement of this item.
- (2) However, in the case of an employee who suffered an injury before the commencement of this item, subitem (1) does not prevent a week from being counted for the purposes of subparagraph 38(2)(b)(ii) of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act) even if the week began before the commencement of this item.
- (3) If:
 - (a) an employee suffered an injury before the commencement of this item; and
 - (b) compensation is payable under Division 3 of Part 2 of the *Seafarers Rehabilitation and Compensation Act 1992* in respect of the injury for 52 weeks (whether consecutive or not) during which the employee is incapacitated; and

Schedule 2 Application and transitional provisions

Part 2 Seacare scheme

- (c) the last of those weeks (the *final payment week*) ends before the employee reaches pension age (within the meaning of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act));

subsection 38(2) of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act) has effect, in relation to the injury, as if the number of weeks mentioned in subparagraph (b)(ii) of that subsection were increased by the number of weeks in the period:

- (d) beginning immediately after the end of the final payment week; and
- (e) ending immediately before the employee reaches pension age (within the meaning of the *Seafarers Rehabilitation and Compensation Act 1992* (as amended by this Act)).

Part 3—Miscellaneous

5 Constitutional safety net

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
 - (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
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*[Minister's second reading speech made in—
House of Representatives on 11 May 2017
Senate on 15 June 2017]*

(84/17)
