SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

QUESTIONS ON NOTICE
BUDGET ESTIMATES 2009-10

Outcome/Agency Comcare

DEEWR Question No. EW0038_10

Senator Siewart on 2 June 2009 in writing.

Question

In relation to the deduction for 'weekly interest on the lump sum' (the deeming rate calculation):
(i) How is the deeming rate applied under section 21 determined?
(ii) Why is the deeming rate not set at the Family payment rate of 3%? What rationale is there for the rate under the SRC Act to be significantly higher than for family payments?
(iii) Who determines if the deeming rate is applied to the gross or net amount of compensation under section 21?
(iv) How is that determination made? Are you prepared to review the decision to apply the deeming rate to the gross amount?
(v) What is the rationale for applying the deeming rate to the gross amount rather than the net?

Answer

Comcare has provided the following response:

(i) Section 21 of the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) sets out the formula to apply in calculating the amount of weekly benefits as follows:-

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

where:

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 <u>in an instrument made under subsection (5);</u> and

(b) dividing the result of paragraph (a) by 52.

(5) For the purposes of the definition of ***weekly interest on the lump sum*** in subsection (3) of this section and subsection 21A(3), <u>the Minister may, by legislative instrument*, specify a rate that applies for the period of 12 months commencing on 1 July in any year</u>.

For 1 July 2009, the Minister for Employment and Workplace Relations has specified this rate as 5.35% (refer to the Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2009, a copy of which together with an explanatory statement was tabled in the Senate on 15 June 2009.

(ii) Prior to 27 April 2007, the deemed annual earning rate for superannuation lump sums for the purpose of determining workers' compensation payments (the deeming rate) was set at a fixed rate of 10%. From 27 April 2007, the Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007 introduced a requirement for a flexible and more representative annual deeming rate.

For this new variable rate, Comcare recommends to the Minister each year a rate which reflects interest rates able to be earned on long-term investments. The rate is based on the 10-year Government bond rate. The current deeming rate is 6.08% and expires on 30 June 2009. From 1 July 2009, the deeming rate will be 5.35%.

The Comcare deeming rate reflects interest able to be earned on long-term investments such as superannuation lump sums. The Family payments deeming rate used by Centrelink is designed for a different purpose.

(iii) This is determined by the SRC Act which requires Comcare to apply the rate to the gross amount. This approach was confirmed in the decision of the Administrative Appeals Tribunal of 24 August 2007 in *Emery and Comcare [2007] AATA 1695*.

(iv) The determination is made in accordance with the SRC Act.

(v) All the amounts in the s21 and 21A formulae are gross amounts, so it would be inconsistent to include one net amount and not others. This interpretation is based on the wording of the SRC Act, which has been tested in the Administrative Appeals Tribunal and is consistent with similar interpretations in other statutes.