



**Australian Government**  
**Department of Human Services**

## **Reasonable action to claim compensation 117-01010020**

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### **Background**

This document outlines information about the requirement for customers or partners to pursue compensation when they have had an injury, illness or condition for which they could claim compensation.

#### **Failure to claim compensation**

A compensation affected payment (CAP) can be withheld if a customer or their partner fails to take action to claim or obtain compensation. This procedure provides an overview of the requirement to take reasonable action to claim compensation.

Failure to take [reasonable action to claim compensation](#) can be considered as a [breach of section 1166](#) of the Social Security Act 1991 and may result in the customer (or their partner) having their compensation affected payment (CAP) withheld. However, once reasonable action has been taken to obtain compensation, payments can either be granted or recommenced.

#### **Customer contact**

Debt Management Officers (DMO) in the Compensation Recovery Team must contact the customer if there are grounds to believe the customer has not claimed compensation or has withdrawn a claim for compensation. The DMO should ask what action the customer has taken and the customer's reason for the action (or lack of) prior to any decision being made. If the customer is required to take further action to pursue their claim for compensation, an Enforcement of compensation rights (s1166) (Q912) letter must be issued. A **Clearance s1166/s1167 Fast Note** should be recorded detailing the customer contact and the assessment of whether the customer is required to take further action to claim compensation.

#### **Assessment and determination process**

Once a claim for compensation has been lodged, it cannot be withdrawn. The claim must go through the entire assessment and determination process. If the compensation payer decides that the customer and/or their partner are eligible for compensation payments and they refuse to accept those payments, their CAP can be withheld.

#### **Acceptable circumstances for not pursuing compensation**

There are circumstances where it may be considered acceptable to [not pursue a claim for compensation](#). Each case must be verified by a DMO working in a Compensation Recovery Team (CRT) before any decision is made that there is no requirement to pursue compensation.

### **Department of Human Services payments**

The Department of Human Services will only make payments of a CAP where the compensation payer denies liability, or where the amount received for periodic compensation is less than the rate that they would be paid by the department. In these cases, the customer and/or their partner may be entitled to a 'top-up' payment from the department.

### **Related links**

[Compensation Recovery Teams \(CLK\)](#)

[Compensation affected payments \(CAPs\)](#)

[Treatment of compensation payments for ABSTUDY](#)

### **References**

This page contains links to policy and legislation.

### **Policy**

[Guide to Social Security Law, 3.1.9.10, Compensation & Payability](#)

[Guide to Social Security Law, 3.1.9.20, Requirements to Pursue & Obtain Compensation](#)

[Guide to Social Security Law, 1.1.E.10, Economic loss compensation](#)

For an explanation on the range of issues that affect the payability of a social security payment, see [Guide to Social Security Law, 3.1.6, General Payability Provisions](#)

### **Legislation**

Links to the Federal Register of Legislation site point to a 'Series' page which lists all available historical versions. Navigate to the appropriate legislative reference(s) listed below by selecting the 'Latest' compilation at the top of the list.

[Social Security Act 1991](#)

- section 1166, Secretary may require person to take action to obtain compensation
- section 1167, Failure to comply with a requirement to take action to obtain compensation

## Training & Support

Related training packages in the Learning Portal (LMS) in ESSentials:

- **CLK00249** – Introduction to Compensation

To find the relevant course, add the course number to the Search field.