



# SAFECOM Direction

**SAFECOM *Ex Gratia* Process  
Applicable to *Prescribed Volunteers***

**SAFECOM EX GRATIA PROCESS  
APPLICABLE TO PRESCRIBED VOLUNTEERS**

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## INTRODUCTION

This document details the eligibility criteria, process, conditions and matters applicable to ‘SAFECOM Direction: Ex Gratia Payments Re: SAFECOM – Prescribed Volunteers’ (the **Ex Gratia Direction**) when SAFECOM is considering an application from a *prescribed volunteer*<sup>1</sup> for *ex gratia* payment for an ‘*eligible injury*’<sup>2</sup> consequent on cessation of a legal entitlement to compensation under the *Return to Work Act 2014* (RTW Act) (the **ex gratia process**).

## PART 1 – DEFINITIONS

**Applicant** means a *prescribed volunteer* who makes an application for *ex gratia* payment under this *ex gratia* process.

**Average Weekly Earnings** means Average Weekly Earnings under S4(1) of the RTW Act.

**Compensation Act** means either or both or all of the *Workers Rehabilitation and Compensation Act 1986*, the *Return to Work Act 2014*, and any successor legislation to the *Return to Work Act 2014*. Insofar as references in this document to “Compensation Act” refer to the *Return to Work Act 2014*, those references are not limited to the *Return to Work Act 2014* as at 1 July 2017.

**Loss of income** means the amount of net loss income or net earnings by an eligible volunteer consequent on an eligible injury, but only to the extent and circumstances provided for in this *ex gratia* process.

**Eligible injury** means an injury that comes within Part 3 – Eligible Injuries.

**Eligible volunteer** means a person who is a prescribed volunteer who has had a claim accepted under a Compensation Act; but is not a person who is a former volunteer who ceased to be a volunteer, or who ceased to be recognised or accepted as a volunteer by SAFECOM or an *emergency services organisation* under the *Fire and Emergency Services Act 2005*, by reason of actual or reasonably apprehended serious misconduct and/or criminal conduct.

**Ex gratia consideration** means the consideration of an application for *ex gratia* payment pursuant to the *ex gratia* process.

**Ex gratia payment** means a payment (or part of a payment) that has been approved by the Treasurer on an *ex gratia* basis to be made as an *ex gratia* payment from the relevant Agency’s funds operating receipts.

**Ex gratia process** means the process established by SAFECOM in the ‘SAFECOM Direction: Ex Gratia Payments Re: SAFECOM – Prescribed Volunteers’, as may operate, or be varied or substituted for, from time to time.

**Injury** means an injury within the meaning of S4(1) of the RTW Act.

**Main employment/secondary employment** pertains to the paid employment of the *eligible volunteer* undertaken separate from their volunteer duties.

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<sup>1</sup> Under the *Return to Work Act 2014* (RTW Act), the Crown in right of the State of South Australia is the presumptive employer of prescribed classes of volunteers. A ‘*prescribed volunteer*’ is a volunteer member of the South Australian Country Fire Service, volunteer State Emergency Services members, volunteer marine rescue members and volunteer firefighters, who is entitled to a benefit under the RTW Act; see RTW Act, s 4 and Schedule 1(1) and Return to Work Regulations 2015.

<sup>2</sup> An ‘*eligible injury*’ is an injury as defined in this document.

**Medical and/or related expenses** means any cost payable or to be payable in respect of costs provided for by S33 of the RTW Act, such as services, appliances, medicines, materials, travel and accommodation.

**Medical practitioner** means a medical practitioner as defined in S4(1) of the RTW Act

**Nominated representative** means a third party engaged or authorised to represent, or act as an agent of, an applicant in their dealings with SAFECOM; and notification to a nominated representative will be deemed to be notification to the applicant.

**No current work capacity** means a present inability arising from the particular eligible injury or the combined effect of one or more eligible injuries such that the eligible volunteer is not able to return to work in suitable employment in his or her employment at the time of the occurrence of the injury or injuries, or in other suitable employment.

**Notional Weekly Earnings** means the eligible volunteer's Notional Weekly Earnings under the relevant Compensation Act as may be adjusted in accordance with this *ex gratia* process having regard to the extent to which the eligible volunteer has incurred a loss of income (and/or earnings) consequent on an eligible injury.

**Prescribed volunteer** means a volunteer who comes within Part 12: Schedule 1 of the RTW Act.

**Professional representative** means a legal practitioner who has been engaged or appointed to represent an eligible volunteer.

**Recognised health practitioner** means a recognised health practitioner within the meaning of S4(1) of the RTW Act.

**Retiring age** means "retiring age" as defined in S44(1) of the RTW Act.

**RTW Act and Return to Work Act 2014** means the *Return to Work Act 2014* as at 1 July 2017 (and all references to the RTW Act and Regulations under that Act are references to that Act and the relevant Regulations as at 1 July 2017, subject to an express contrary intention).

**Suitable employment** means suitable employment as defined under S4(1) of the RTW Act.

**SAFECOM** means the South Australian Fire and Emergency Services Commission or the Chief Executive, SAFECOM.

**SAFECOM, Chief Executive and Chief Executive, SAFECOM** means the person holding or acting in the position of Chief Executive, SAFECOM and includes a person to whom the Chief Executive has delegated decision making in respect of the *ex gratia* process or *ex gratia* consideration.

**Treasurer** means the person holding or acting in the office of Treasurer of the State of South Australia and includes a person delegated by the Treasurer for the purposes of this *ex gratia* process.

**WR&C Act** means the *Workers Rehabilitation and Compensation Act 1986*.

In this *ex gratia* process:

- the singular includes the plural and vice versa, unless the context otherwise requires;
- a reference to *ex gratia* payment includes an approval for more than one *ex gratia* payment in respect of the same eligible volunteer or more than one application by an eligible volunteer;
- a notice or action by SAFECOM can be given or done by the Chief Executive, SAFECOM, or an applicable employee or representative of SAFECOM;
- a notice can be given electronically (e.g. email), by post or courier to the last known electronic or physical address.

## PART 2 – EX GRATIA PROCESS

1. This *ex gratia* process details the eligibility criteria, process, conditions and matters applicable to the *Ex Gratia* Direction.
2. This *ex gratia* process:
  - 2.1. Applies to a volunteer of the South Australian Country Fire Service (**CFS**), South Australian State Emergency Service (**SES**) and Volunteer Marine Rescue (**VMR**) who is deemed a '*prescribed volunteer*' in accordance with Part 12: Schedule 1 of the *Return to Work Act 2014* (**RTW Act**) (**prescribed volunteer**).
  - 2.2. Provides for an individual case-by-case assessment and consideration by the South Australian Fire and Emergency Services Commission (**SAFECOM**) of an application by a *prescribed volunteer* for *ex gratia* payment that may have been applicable under the repealed *Workers Rehabilitation and Compensation Act 1986* (WR&C Act) or the RTW Act if the '*eligible volunteer*' ceases to be entitled to similar payment under the RTW Act.
  - 2.3. Is managed by SAFECOM, on behalf of the CFS and SES/VMR.
  - 2.4. Does not establish any legal entitlement, expectation or obligation; and for all purposes and in every respect remains wholly *ex gratia* at the absolute discretion of the Treasurer for the State of South Australia (**Treasurer**). A decision about, or approval for, *ex gratia* payment by the Treasurer is not subject to appeal; does not operate as a precedent; may be withdrawn, varied or substituted for at any time by the Treasurer; and does not bind any future or further exercise of an *ex gratia* discretion, whether in respect of the circumstances applicable to an application, or the same or any other applicant.
  - 2.5. Does not apply to circumstances where similar or other payment is made under State, Territory or Commonwealth legislation that provides for compensation, damages, payment or benefit/s to be payable or recoverable; or where similar payment, benefit or entitlement is available, claimed or paid from any other source or pursuant to other recourse, or under any other statute or law, in respect of an eligible injury for which an application for *ex gratia* payment is made. That is, the recovery of compensation, expense, benefit or damages (howsoever described) in respect of an eligible injury under any law is a bar to *ex gratia* consideration in respect of the same injury under this *ex gratia* process.

### Application

3. An application can be made by a '*prescribed volunteer*' to CFS/SES/VMR (as applicable) or SAFECOM for *ex gratia* payment to or for the benefit of the *prescribed volunteer* who is an '*eligible volunteer*' and has an '*eligible injury*' for '*medical and/or related expense/s*' and/or '*loss of income*' that would have been applicable under the repealed WR&C Act if the *eligible volunteer* ceases to be entitled to a similar payment under the RTW Act.
4. An application by an eligible volunteer for *ex gratia* payment consequent on this *ex gratia* process must be made in writing to SAFECOM or to the CFS/SES/VMR (as applicable), together with supporting material; and should be decided as quickly as reasonably practicable.
5. An application, and any ensuing *ex gratia* payment, is strictly conditional on the conditions and matters expressed in this *ex gratia* process.
6. SAFECOM may determine appropriate forms for use in connection with this *ex gratia* process, including forms for an applicant providing authority/ies to SAFECOM to obtain information concerning matters the subject of the application.

### Consideration

7. SAFECOM will consider an application (and supporting material) from a *prescribed volunteer* and make a recommendation to the CFS or SES/VMR and then to the Treasurer about the exercise of

the Treasurer's discretion to approve, or not, making an *ex gratia* payment from the CFS or SES/VMR operating funds.

8. SAFECOM will discuss its recommendation with the CFS or SES/VMR before providing its recommendation to the Treasurer through the Chief Executive, Department of Treasury and Finance.

### Communication

9. An application, notice or notification, and any material provided, in respect of this *ex gratia* process:
  - 9.1. Is to be made or provided in writing (paper or electronic form) to SAFECOM or an applicant as applicable (or their respective representative); and
  - 9.2. Will be deemed to have been provided to:
    - ❖ SAFECOM, if sent to the head office of SAFECOM or its nominated email address;
    - ❖ the applicant, if sent to their last known residential address; nominated email address; or to their representative.
10. An assessment, recommendation, decision or approval made in respect of this *ex gratia* process will not operate as a precedent, bind or be determinative of any future, further, or other application or circumstance in respect of the same or any other applicant, *eligible volunteer* or *prescribed volunteer*.

### Conditional

11. In making an application for *ex gratia* payment, the applicant expressly acknowledges and agrees that the application; any approved *ex gratia* payment; and receipt of an *ex gratia* payment, is conditional on the matters addressed in this *ex gratia* process, including:
  - 11.1. The obligation of utmost good faith and full disclosure by the applicant or *eligible volunteer* applies to an application; the *ex gratia* process; any ensuing *ex gratia* payment; any matter that may arise that is not dealt with, or sufficiently dealt with, in this *ex gratia* process; .and extends beyond the receipt of any *ex gratia* payment;
  - 11.2. The application; any assessment, recommendation, advice, decision or exercise of discretion made about the application; and any *ex gratia* payment may become the subject of disclosure by reason of law; parliamentary process; or a reporting, disclosure or auditing requirement applicable to an agency of the State of South Australia;
  - 11.3. Full disclosure will be made to SAFECOM by the applicant (or their nominated representative) of any proposed, current or pending process or legal proceeding in respect of a third party in which damages, loss, compensation, reimbursement or other recovery or payment is sought in respect of the *eligible injury* for which the applicant has made an application for *ex gratia* payment;
  - 11.4. *Ex gratia* consideration will not apply under this *ex gratia* process in respect of an eligible injury to the extent that compensation, expense, benefit or damages (howsoever described) has been received in respect of the same injury under the laws of a place (whether within or outside Australia).
  - 11.5. Any *ex gratia* payment that may be made to or for the benefit of an applicant, shall be repayable to the CFS/SES/VMR (as applicable); SAFECOM; or the State of South Australia if the applicant recovers or receives from an insurer; other government entity; or a third party, damages, compensation, benefits, reimbursement, payment or other contribution to expenses or economic or other loss (howsoever described, and whether as a global or differentiated amount) in respect of which *ex gratia* payment has been made, including payment or benefit/s from the Commonwealth or a health insurer for medical and related expense/s. The applicant expressly undertakes to fully disclose at all times to SAFECOM whether the applicant has made, or will make, a claim upon an insurer; a third party; or an entity of another government. The applicant will notify SAFECOM within 14 days of having

an expectation of, or agreement for, any such recovery or receipt; or the receipt (personally or by their representative) of any such benefit, recovery or applicable payment; and

- 11.6. An applicant or eligible volunteer expressly acknowledges that it is not their intention to seek or receive both an *ex gratia* payment and a payment, benefit or damages (howsoever described) from any other source whatsoever in respect of the same expense or loss in respect of an eligible injury. If that occurs, the applicant expressly agrees that the applicable amount of *ex gratia* payment will be repaid or, if applicable, will be deducted from any further *ex gratia* payment, or will otherwise be taken into account in an *ex gratia* consideration.

### **PART 3 – ELIGIBLE INJURIES**

#### **Only eligible volunteers can have eligible injuries**

12. An injury is not an eligible injury unless the injured volunteer is deemed an eligible volunteer.

#### **Temporal connection to volunteer duties**

13. An eligible injury *arises* out of or in the course of the eligible volunteer undertaking work of a prescribed class as outlined in Part 12: Schedule 1 of the RTW Act.

#### **Causal connection to volunteer duties**

14. To be an eligible injury, the injury must have:
  - 14.1. resulted from conduct directed at the eligible volunteer that is or appears to be a criminal offence;
  - 14.2. occurred as a direct and immediate result of conduct that is or appears to be a criminal offence; or
  - 14.3. occurred in other circumstances where the eligible volunteer is placed in a dangerous situation, which can include training (however a psychiatric injury is only an eligible injury if caused as a consequence of a specific incident or incidents).

#### **Incapacity required for eligibility**

15. An eligible injury temporarily or permanently incapacitates the injured eligible volunteer for work (including because of a need to attend on a medical practitioner for treatment or examination).

#### **When an injury ceases to be an eligible injury**

16. An injury ceases to be an eligible injury when:
  - 16.1. the injured eligible volunteer makes a return to work within the meaning of the RTW Act which is sustainable, and is earning a salary or wage that is the same or more than their Notional Weekly Earnings; and,
  - 16.2. there is no reasonable basis to incur medical and/or related expenses (whether to treat symptoms or reduce the likelihood of symptoms recurring or for any other reason deemed appropriate by a medical practitioner).

#### **When an injury resumes being an eligible injury**

17. If an injury ceased to be an eligible injury based on the preceding paragraph 16, but those criteria are no longer met, then the injury resumes being an eligible injury.

#### **Compensation Act status for an injury to be an eligible injury**

18. To be an eligible injury, a claim for compensation relating to the injury must have been accepted under a Compensation Act.



19. If, in relation to a particular injury:

19.1. no compensation has been paid under the RTW Act and no Recovery/Return to Work Plan has been established under the RTW Act,

that injury is only an eligible injury to the extent that the eligible volunteer would be entitled to receive benefits or entitlements under the WR&C Act (disregarding the operation of the RTW Act).

**Consequential injuries taken to be part of original eligible injuries**

20. Any injury arising out of or in the course of an eligible volunteer's attendance at a place to:

20.1. receive a medical service in relation to an eligible injury;

20.2. obtain a medical report or medical certificate (or to be examined for that purpose) in relation to an eligible injury;

20.3. receive services or assistance or perform activities intended to assist the eligible volunteer's recovery or return to work or restoration to the community in relation to an eligible injury; or

20.4. to apply for, or receive, compensation in relation to an eligible injury,

will be taken to constitute part of the original eligible injury, whether or not the eligible volunteer had additional reasons for attending at that place (for example, if an injury arose from performing activities at the eligible volunteer's home recommended by a doctor to assist in recovering from an eligible injury).

**Injuries and incapacity attributable to surgery etc**

21. Any injury or incapacity attributable to surgery or other treatment or service or advice performed or provided with due care and skill by a person professing to have particular skills and undertaken or provided in relation to an eligible injury will be taken to constitute part of the original eligible injury.

**PART 4 – EX GRATIA PAYMENT FOR MEDICAL EXPENSES**

**Medical and related expenses**

22. *Ex gratia* payment may be approved in relation to medical and/or related expenses incurred in consequence of an eligible injury, whenever any such expenses are incurred. To avoid doubt, an eligible volunteer's entitlement to apply for *ex gratia* payment for medical and/or related expenses does not end only because an application for *ex gratia* payment for loss of income ceases to be applicable. However, if a redemption or commutation in respect of medical and/or related expense entitlements arising out of a particular injury/ies has been paid pursuant to the WR&C Act or the RTW Act, *ex gratia* payment will not be approved for medical and/or related expenses in relation to that injury/ies.

23. An approved medical and/or related expense may be paid directly to the treating provider or reimbursed to the eligible volunteer via the appropriate reimbursement form with itemised receipt/s attached, provided that if the eligible volunteer, makes a claim to and is paid a monetary benefit from: Medicare or a Commonwealth authority; a private health or other insurer; or a third party, the amount of the *ex gratia* payment is to be reduced by the amount of such monetary benefit, which is to be reimbursed to the CFS/SES/VMR within 28 days or as negotiated with the SAFECOM Case Manager (which may include offsetting against any future approved *ex gratia* payment).

24. An application for *ex gratia* payment in relation to medical and/or related expenses incurred must include:

24.1. A declaration and disclosure: an applicant must declare that the medical and/or related expense has not been paid or partly paid by Medicare or other Commonwealth authority; a medical, private, personal or other insurer; or some other third party or entity; and that if any payment is sought by the applicant at any time from any thereof, the applicant will forthwith

disclose that to the CFS/SES/VMR (as applicable) and whether and what payment has been or will be received by or for the benefit of the applicant; and

- 24.2. An authority to disclose medical expenses: an applicant must provide an ongoing authority in favour of CFS/SES/VMR (as applicable) for the disclosure by a provider of medical and/or related services of the medical and/or related expenses incurred, or to be incurred, by an applicant (incl. hospital) and whether or what expense has been, or will be, met in full or in part by other than the applicant.

#### **Period of *ex gratia* consideration**

25. *Ex gratia* payment may be considered in relation to medical and/or related expenses incurred from the date of the cessation of the eligible volunteer's entitlement to compensation for medical and/or related expenses under the WR&C Act or RTW Act.

#### **Medical and related expenses – pre-approval**

26. An *ex gratia* payment may be approved for a medical and/or related expense that the eligible volunteer wishes to incur but is yet to incur, provided that any such approval or payment may be conditional.

#### **General Review of medical and/or related expenses**

27. An eligible volunteer who is receiving *ex gratia* payment for medical and/or related expense may, by notice in writing, be required by SAFECOM to attend and submit to an examination by a medical practitioner nominated by SAFECOM, or to furnish evidence, in respect of an eligible injury or medical and/or related expenses incurred or to be incurred by the eligible volunteer.
- 27.1. If an eligible volunteer fails to comply with the requirement to attend and submit as specified in the notice, or to furnish evidence required in the notice within the period specified in the notice, then *ex gratia* payment for medical and/or related expense to the eligible volunteer may be suspended by SAFECOM until compliance is achieved, provided that if the eligible volunteer fails to comply with the requirement in a second notice in writing by SAFECOM, *ex gratia* payment will cease as specified in that second or any further notice by SAFECOM.

### **PART 5 – EX GRATIA PAYMENT FOR LOSS OF INCOME**

28. *Ex gratia* payment may be approved in the form of weekly payments for loss of income in respect of incapacity for work (whether partial or total) arising out of an eligible injury in accordance with this *ex gratia* process. However, if a redemption or commutation in respect of weekly payments arising out of a particular injury or injuries has been paid pursuant to the WR&C Act or the RTW Act, *ex gratia* payment will not be subject to *ex gratia* consideration or approved for loss of income in relation to that injury or injuries.

#### **Period of *ex gratia* consideration**

29. *Ex gratia* payment may be considered in relation to weekly payments for loss of income from the date of the cessation of the eligible volunteer's entitlement to compensation for weekly payments of income compensation under the RTW Act.

#### **Work capacity review**

30. *Ex gratia* payment will not be approved for loss of income in respect of a particular eligible injury without an entitling assessment (work capacity review) being undertaken. An *ex gratia* payment will cease if there is a disentitling assessment.

### **Ex gratia payment for loss of income – quantum**

31. *Ex gratia* payment for loss of income may be approved up to 80% of the eligible volunteer's Notional Weekly Earnings or, if the eligible volunteer has actual earnings, 80% of the difference between actual net earnings and the eligible volunteer's Notional Weekly Earnings.

### **Ex gratia payment for loss of income – taxation**

32. *Ex gratia* payment for loss of income constitutes assessable income pursuant to the *Income Tax Assessment Act* (1997) and is subject to taxation in the same way as ordinary income under this Act.

### **Ex gratia payment for loss of income – duration**

33. *Ex gratia* payment will not be the subject of *ex gratia* consideration, or be approved, for loss of income when the eligible volunteer reaches retiring age.
34. If an eligible volunteer breaches the obligation of mutuality, an *ex gratia* payment in respect of loss of income will be discontinued for such time as the eligible volunteer remains in breach of the obligation of mutuality. An eligible volunteer who elects to resign from their main employment in respect of *ex gratia* payment for loss of income is being made or was approved, or ceasing to perform work of a prescribed class (other than on medical advice to resign) as outlined in Part 12: Schedule 1 of the RTW Act breaches mutuality. Serious misconduct and/or criminal conduct by an eligible volunteer breaches mutuality.
35. *Ex gratia* payment for loss of income will not be approved, and/or may be discontinued, as a result of a completed disentitling assessment (work capacity review).

### **Work Capacity Reviews**

36. *Ex gratia* payment in respect of loss of income will not be approved unless the eligible volunteer is assessed in relation to the cumulative effect of one or more eligible injuries (an **entitling assessment**) as:
  - 36.1. having no current work capacity; and
  - 36.2. likely to continue indefinitely to have no current work capacity; or
  - 36.3. being in employment but because of the injury or injuries is likely to continue indefinitely to be incapable of undertaking further or additional employment or work that would increase the eligible volunteer's current weekly earnings.
37. SAFECOM may make an entitling assessment on any basis.
38. A **disentitling assessment** is an assessment by SAFECOM that the eligible volunteer does not meet the criteria for an entitling assessment. A disentitling assessment may be made if:
  - 38.1. SAFECOM has sought and obtained an opinion from an IMA (whose expertise is appropriate to the particular injury or injuries) about whether the eligible volunteer meets the criteria for an entitling assessment; and
  - 38.2. if the eligible volunteer has earnings in employment or other work, the IMA considers that notwithstanding the eligible injury or injuries the eligible volunteer is, and is likely to continue indefinitely to be, capable of undertaking further or additional employment or work which would increase the eligible volunteer's earnings, and specifies what that additional employment or work is; and
  - 38.3. the IMA provides a written opinion that the eligible volunteer does not meet the criteria for an entitling assessment; and
  - 38.4. if the eligible volunteer has earnings in employment or other work, the IMA specifies on reasonable grounds the additional employment or work the IMA considers that the eligible volunteer could do to increase their earnings.

### **Work capacity reviews and commencing or recommencing payment for loss of income**

39. If an eligible volunteer, who is not receiving *ex gratia* payment for loss of income or income compensation under a Compensation Act, applies for *ex gratia* payment for loss of income, then *ex gratia* payment will not be approved unless an entitling assessment is made. In those circumstances, if an entitling assessment is made then *ex gratia* payment for loss of income may include arrears.

### **First work capacity review; timing**

40. A work capacity review may be performed before or after an eligible volunteer has exhausted their entitlement to weekly payments under a Compensation Act.
41. An eligible volunteer who, immediately before the end of the second designated period defined in S39 of the RTW Act, was in receipt of weekly payments under the RTW Act may apply for *ex gratia* payment for loss of income at the same rate pending a work capacity review being conducted.

### **Reassessment**

42. An eligible volunteer's work capacity may be reassessed in accordance with this *ex gratia* process at any reasonable time and may be reassessed as often as is reasonably necessary.

### ***Ex gratia* payment for loss of income – effect of income compensation lump-sum**

43. *Ex gratia* payment may be approved in the form of a loss of income lump-sum payment (in addition to payment for loss of income before receiving a loss of income lump-sum payment) to an eligible volunteer.
44. Once an eligible volunteer has received *ex gratia* payment in the form of a loss of income lump-sum payment, then no further *ex gratia* payment for loss of income will be the subject of *ex gratia* consideration or approval in respect of the eligible injury.

### ***Ex gratia* payment for loss of income – effect of lump-sum payment for economic loss**

45. The assessment of an *ex gratia* payment for loss of income may take into account an eligible volunteer's entitlement to, and/or receipt of, a payment pursuant to Part 4, Division 6 (Permanent Impairment) of the RTW Act.

### **Obligation of mutuality**

46. An eligible volunteer receiving *ex gratia* payment for loss of income must not breach the obligation of mutuality defined by S48(3) and (4) of the RTW Act. If an eligible volunteer breaches mutuality, mutuality may be restored in accordance with the principles applicable under the RTW Act.

## **PART 6 – REDUCTION, DISCONTINUANCE & SUSPENSION OF *EX GRATIA* PAYMENT**

47. An *ex gratia* payment for loss of income to an eligible volunteer may be discontinued or reduced in accordance with S48 and other principles applicable under the RTW Act.
48. If an eligible volunteer is receiving *ex gratia* payment for loss of income in accordance with this *ex gratia* process, no cessation or reduction of payment for loss of income should occur until the eligible volunteer has received at least 28 days written notice of any such cessation or reduction, unless a shorter period is approved by the Treasurer.

## PART 7 – ADJUSTMENTS TO *EX GRATIA* PAYMENT FOR LOSS OF INCOME

### Economic adjustments to *ex gratia* payment for loss of income

49. If an eligible volunteer is incapacitated for work or appears likely to be incapacitated for work for more than one year, then, during each year of incapacity, *ex gratia* payment for loss of income may be reviewed for the purpose of making an adjustment to the amount of the payment.

### Quantum of economic adjustments

50. If an eligible volunteer receives *ex gratia* payment for loss of income having regard to Notional Weekly Earnings, the *ex gratia* payment for loss of income may be adjusted by SAFECOM to reflect increases in the wage or salary rates in respect of which an *ex gratia* payment for loss of income is made, provided that an eligible volunteer may instead request that SAFECOM make any such adjustment having regard to the *Wage Price Index for total hourly rates of pay excluding bonuses for South Australia*, and the quantum of *ex gratia* payment for loss of income to the eligible volunteer may be adjusted accordingly.

### Notice requirements before economic adjustment decided

51. At least 14 days *before* deciding the quantum of an economic adjustment under paragraph 50, the eligible volunteer should be given written notice of the following:
- 51.1. the quantum of the adjustment and how the proposed economic adjustment has been calculated by applying that increase to the eligible volunteer's pre-existing Notional Weekly Earnings; and
  - 51.2. the eligible volunteer's right to make written representations on the review within a reasonable time specified in the notice.

### Timing of economic adjustment

52. An economic adjustment under paragraph 50 operates from the end of the year of incapacity in which the review is made.

### Adjustments due to change from original arrangements

53. SAFECOM may, on its own initiative, or at the written request of an eligible volunteer, review the calculation of the Notional Weekly Earnings of the eligible volunteer for the purpose of making an adjustment due to:
- 53.1. a change in a component of the eligible volunteer's remuneration used to determine Average Weekly Earnings (including a component constituted by a non-cash benefit); or
  - 53.2. a change in the equipment or facilities provided or made available to the eligible volunteer (if relevant to Average Weekly Earnings).
54. Before commencing this review, the eligible volunteer should be given written notice informing the eligible volunteer of the proposed review and inviting the eligible volunteer to make written representations on the subject of the review within a reasonable time specified in the notice.
55. If the review establishes that there has been a change that warrants an adjustment, then the *ex gratia* payment for loss of income to the eligible volunteer may be adjusted accordingly.
56. This adjustment:
- 56.1. may take effect as an adjustment to the eligible volunteer's Notional Weekly Earnings (and may therefore increase or reduce the *ex gratia* payment for loss of income to the eligible volunteer); and
  - 56.2. should operate from an appropriate date (which may be an antecedent date but not a date that is before the date of the change on which the adjustment is based and not so as to result in a retrospective reduction in *ex gratia* payment for loss of income).

57. For the purposes of this review, the eligible volunteer to whom the review relates, may by notice in writing be required to furnish any information that is reasonably requested as relevant to the review.
58. If an eligible volunteer fails to comply with a requirement to furnish requested information within the time allowed in the notice, then *ex gratia* payment for loss of income to the eligible volunteer may be suspended.
59. On completion of the review, the eligible volunteer should be given written notice setting out the decision on the review.
60. A review under this Part does not limit SAFECOM, under any other paragraph of this *ex gratia* process, to not recommend, or to reduce or discontinue, *ex gratia* payment for loss of income to an eligible volunteer.

#### **General Review of *ex gratia* payment for loss of income**

61. SAFECOM may, on its own initiative, or if requested in writing by an eligible volunteer (except within 3 months of the completion of an earlier review), review the amount of *ex gratia* payment for loss of income made to an eligible volunteer.
62. Before any such review, the eligible volunteer should be given written notice of the proposed review and invite the eligible volunteer to make a written representation on the subject of the review within a reasonable time specified in the notice.
63. If the review establishes that the *ex gratia* payment for loss of income to an eligible volunteer should be ceased, increased or decreased, then the *ex gratia* payment for loss of income may be adjusted or discontinued to reflect that finding.
64. For the purposes of this review, an eligible volunteer who is receiving *ex gratia* payment for loss of income may, by notice in writing, be required by SAFECOM to attend and submit to an examination by a medical practitioner nominated by SAFECOM, or to furnish evidence of the eligible volunteer's income and/or earnings.
  - 64.1. If an eligible volunteer fails to comply with the requirement as specified in the notice, or to furnish evidence of income and/or earnings within the period specified in the notice, then *ex gratia* payment for loss of income to the eligible volunteer may be suspended by SAFECOM until compliance is achieved, provided that if the eligible volunteer fails to comply with the requirement in a second notice in writing by SAFECOM, *ex gratia* payment will cease as specified in that second or any further notice by SAFECOM.
65. On completion of the review, the eligible volunteer should be given written notice setting out the decision on the review.

### **PART 8 – DECISIONS ABOUT APPLICATIONS**

#### **Procedural Fairness**

66. An eligible volunteer should be provided with procedural fairness before SAFECOM makes a recommendation to the Treasurer about the approval or not of an application for *ex gratia* payment that, considered as a whole, is unfavourable to the applicant.
67. If SAFECOM proposes to make such a recommendation, and except where this *ex gratia* process provides otherwise, SAFECOM will provide procedural fairness to the applicant as follows:
  - 67.1. SAFECOM will provide not less than 14 calendar days notice to the applicant of the proposed unfavourable recommendation and the basis thereof;
  - 67.2. An applicant has not less than 14 calendar days (or as agreed) in which to provide SAFECOM with any comments and/or additional information concerning the proposed unfavourable recommendation;

- 67.3. SAFECOM will have regard to any such material before finalising its recommendation to the Treasurer; and, if applicable, will notify the applicant that the proposed unfavourable recommendation has been modified (and in what respect) or will not be made; and
- 67.4. SAFECOM will provide to the Treasurer (through the Chief Executive, Department of Treasury and Finance) its recommendation (including relevant documentation and information from the applicant).

## **PART 9 – DISCRETIONARY NATURE OF *EX GRATIA* PAYMENT**

68. Nothing in this *ex gratia* process is intended to detract from its *ex gratia* nature. Any *ex gratia* payment that might be made to an applicant does not lose its *ex gratia* character by reason of it being payment made consequent on applying this *ex gratia* process; or the applicant being afforded procedural fairness in respect of the *ex gratia* process, *ex gratia* consideration or, if applicable, an *ex gratia* payment.
69. The adoption of this *ex gratia* process by SAFECOM and its application, or manner in which it is to operate or be applied, to an application by an eligible volunteer for *ex gratia* payment is not intended by SAFECOM to give rise to any legal liability, obligation or entitlement.
70. *Ex gratia* consideration; the exercise of an *ex gratia* discretion; or the making, cessation or suspension of an *ex gratia* payment, does not operate as a precedent or bind any future or further *ex gratia* consideration or exercise of an *ex gratia* discretion in respect of the same or any other applicant.
71. Nothing in this *ex gratia* process is intended to bind or require any particular process of assessment or decision-making, or any particular decision, of the Treasurer in relation to an application by an eligible volunteer or a recommendation of SAFECOM in respect of such application. An *ex gratia* decision of the Treasurer in relation to approval or not of an *ex gratia* payment; or to subsequently withdraw, vary or substitute a prior approval, is not subject to any dispute, appeal or review process, that is, it remains wholly *ex gratia* for all purposes whatsoever notwithstanding this *ex gratia* process.

## **PART 10 – MISCELLANEOUS**

### **Injuries that develop gradually**

72. The date when an injury that develops gradually or is a disease will be taken to have occurred will be determined in accordance with RTW Act S188.

### **Other recourse**

73. *Ex gratia* consideration will not apply if similar payment/s in respect of an eligible injury have been made under a Compensation Act, or if similar entitlements are available to an eligible volunteer from any other source whatsoever, or under any other statute or law.
74. If an eligible volunteer receives an *ex gratia* payment under this *ex gratia* process in respect of an eligible injury and, in respect of the same injury, has made a claim for, or subsequently receives, compensation, recompense, damages or other payment or benefit under the laws of a place (whether within or outside Australia), the eligible volunteer must make full disclosure thereof to SAFECOM and repay to SAFECOM the amount (in part or in full) received as *ex gratia* payment to the extent that any payment of compensation, expense, benefit or damages (howsoever described) to the eligible volunteer (or their representative) has taken into account (whether specifically; within a total amount; or as an element of a global non-differentiated amount, and irrespective of whether by way of compromise, settlement or judgement) matters in respect of which *ex gratia* payment was made.

SAFECOM Board  
26/06/ 2020