



Pre 88

# HOD

## Procedures & Entitlements

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Information Booklet for Members

**C.A.R.E.**

Career and Resilience Education Program

## VERSION CONTROL

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## DISTRIBUTION CONTROL

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Please contact the relevant persons listed in the contacts section of this booklet for further advice.

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# INTRODUCTION

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This booklet provides basic information relating to a medical discharge from the NSW Police for members who were attested before 1 April 1988.

This booklet is intended as a **guide only**. It is not conclusive of all options arising under relevant legislation and does not cover all the circumstances that may arise when considering your options. It is incumbent upon each individual to investigate their own entitlements and rights further to ensure they have accurate information relevant to their individual matter.

Members seeking Scheme information should always contact the fund by phone, email or via the website. Contact details are contained at the end of this booklet.

## 1. Who is Entitled to HOD Benefits?

Pre 88 Police Officers are those Officers who were attested prior to 1st April 1988 and are eligible for Hurt on Duty (HOD) benefits as prescribed in the Police Regulation (Superannuation) Act 1906, NSW Police Act 1990 and the Police Regulations.

## 2. When Should an Officer Submit a HOD Claim?

When they have sustained an injury/illness at work and/or they have sought medical advice and their doctor is of the opinion that their injury/illness is as a result of work. A claim should be submitted when there is an absence from duty, an expense incurred for treatment, or a permanent impairment to the use of a part of the body.

## 3. When are Workers Covered by Workers Compensation?

Generally speaking, a worker is entitled to compensation for work-related personal injuries suffered between the time the worker leaves his or her place of abode for the purpose of travelling to work and until he or she returns home. Workers are covered at the workplace and away from the workplace, provided the injury arose out of or in the course of employment and provided the employment concerned was a substantial contributing factor to the relevant injury/illness.

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## 4. How Does a Pre 88 Officer Lodge a HOD Claim?

- **Report the Injury** as soon as possible to your Commander/ Supervisor.
- **Complete the P902 online incident notification form** within 24 hours of sustaining an injury (this can be completed by the Officer or the Supervisor if the Officer is not at work). Officers who are not at work should submit their WorkCover certificate of capacity - and any other supporting material - to their Command ASAP to ensure the Supervisor can submit the form for them (this is the register of injuries form).
- Where an Officer has incurred medical expenses or had a period of absence as a result of the injury, they must **complete the P124 HOD benefits claim** form and submit through chain of command.
- **See a doctor and obtain a WorkCover certificate of capacity** if unfit to attend work. These WorkCover certificates **must be** obtained on the first day of your absence from work. Backdated WorkCover certificates of capacity are **NOT** acceptable.

- Submit treatment expenses/ requests for treatment to Allianz Insurance.

**Please Note:** A WorkCover certificate of capacity must be obtained from an officer's general practitioner or treating specialist. Certificates from psychologists, physiotherapists and chiropractors are **NOT** acceptable because they are not considered to be medical practitioners under the Medical Practitioners Act 1938.

## 5. Who Determines if an Injury or Illness is Work Related?

The Commissioner of Police is responsible for making the decision as to whether or not to accept a HOD claim. However, the Commissioner has delegated his authority to the Manager of the Hurt on Duty Unit who manages the HOD liability process.

### Hurt on Duty Unit Human Resource Services

Level 7a  
Police Headquarters  
1 Charles Street  
PARRAMATTA NSW 2124  
Ph: 8835 9219  
Fax: 8835 8347

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## 6. What Information will be Obtained for a Claim?

When your P902 form and P124 forms are sent to the Hurt on Duty Unit, and they have received a copy of your WorkCover certificate of capacity, this will generate a letter to the Officer outlining their claim number and confirming receipt of their claim.

The Hurt on Duty Unit will assess the claim which may involve the following:

- Requesting a comprehensive report from the Officer seeking further information relating to the incident and reasons for the claim;
- Interviewing witnesses/colleagues in the workplace;
- An investigation being conducted by the HOD Investigator (or local workplace Investigator);
- Obtaining information from the Commander at the workplace;
- Seeking written reports from the injured Officer's treating doctors;
- Sending the Officer to an independent medical specialist for a report.

## 7. Psychological Conditions

No compensation is payable for a psychological injury if the injury was:

- Wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer;

- With respect to matters relating to transfer, demotion, promotions, performance appraisal, discipline, retrenchment or dismissal of the worker or employment benefits.

For example: If you suffer a psychiatric illness primarily as a result of being unsuccessful in obtaining a promotion or as a result of a transfer, your claim may not be approved.

## 8. Who Pays Medical Expenses for a Claim?

Any medical expenses relating to the injury/illness should be submitted directly to Allianz Insurance who have been contracted to make payments for medical expenses. Allianz will be notified electronically of an Officer's injury within 24 hours of notification. Once Allianz receive the P902 and P124 forms from NSW Police they will write to the Officer confirming receipt and issue a claim number.

In order for Allianz to meet the medical expenses, pre approval should be obtained from Allianz prior to undergoing treatment/ investigations, such as x-rays, MRI's and CT scans etc. You should speak with the Case Officer allocated at Allianz in relation to the material they require for treatment approvals. This will usually require a referral from a general practitioner and a current WorkCover certificate of capacity recommending the treatment/ investigation.

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Once approval has been given, all medical expenses and travel expenses related to the claim should be sent through to Allianz. There is no need to send medical expenses through your Command or to the Hurt on Duty Unit.

**Allianz Australia Insurance Limited**  
GPO Box 4056  
SYDNEY NSW 2001  
Ph: 1300 788 946  
Fax: 1300 788 942

## 9. How Long Will it Take NSW Police to Determine a Claim?

Unfortunately for pre 88 Officers there are no legislative timeframes in relation to determining a HOD claim. Historically the process has been very slow and in some cases took between 12 – 18 months (psychological cases mostly). However, significant improvements have been made and delays are reducing. Less complex and straightforward claims can be approved more quickly but is dependent upon the number of stages the HOD Unit Case Officer has to go through in the claims process. Officers can assist in expediting a determination by providing any information requested from them quickly and following up their own doctors to ensure information requested has been provided.

## 10. Provisional Liability

There is NO obligation on the employer to make any provisional liability payments for HOD claims because it is not provided for under the Police Regulation (Superannuation) Act 1906. However, NSW Police has adopted a process with Allianz of extending provisional liability payments for HOD medical expenses. This will allow Officers to seek medical treatment whilst their claim is being determined. In the event of a claim being declined, these expenses will not need to be repaid and will be covered up until the date of the decline.

In relation to weekly payments (salary), NSW Police has adopted a process whereby it will be entered into the SAP system as HOD initially which will mean that an Officer's Sick Leave balance should not reduce. In the event that a claim is approved HOD, the SAP system will remain the same recording absences as HOD.

In the event of a claim being declined, NSW Police will go back through an Officer's SAP history and debit the Officer's Sick Leave, Annual Leave and then Special Sick Leave for any remaining periods up until the decline date. Officers should not be required to use extended leave for this process. Further information relating to declined claims can be found later in this booklet.

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## 11. Ongoing or Recurring Injuries

If you experience a recurrence of an existing injury, you should:

- Obtain a new WorkCover certificate of capacity if a period of absence occurs where your doctor has indicated it is a recurrence of a previous HOD claim;
- A report from the injured Officer may be required outlining how it is related to previous claim;
- Complete a fresh P124 HOD claim form, indicating the previous claim number.

## 12. Officers on Extended Sick Leave

On 23 November 2010, a Bill passed through Parliament which provides the Commissioner of Police the ability to apply, through STC, for a medical discharge on behalf of an Officer.

The legislation states that an Officer must have been on sick leave for a total period of at least 12 months in the previous 18 months and whose health is, in the opinion of a medical practitioner, unlikely to improve sufficiently to enable them to return to duty.

The Commissioner is required to provide the Officer with a copy of the proposed application and give the Officer 28 days to notify of any other infirmities, and whether those infirmities were as a result of being hurt on duty.

However, the Commissioner is also able to provide the Officer with a copy of the proposed medical discharge application after the Officer has been on sick leave for at least 8 months during the previous 18 months, in anticipation that the Officer will remain on sick leave for a further 4 months, again giving the Officer 28 days notice to notify of any other infirmities which should be included in the application.

The proposed medical discharge application is to be delivered to the Officer by personal service.

Whilst the legislation provides mandatory consultation with the Officer regarding the medical discharge application and the infirmities claimed, the application itself (after consultation) can be made by the Commissioner of Police with or without the consent of the Officer to whom the application relates. It also allows the Commissioner of Police to supply medical information to STC about the Officer without the need to obtain consent from the Officer, despite any restrictions in applicable privacy legislation.

It is important that Officers advise STC of all medical conditions, including non hurt on duty conditions that affect them performing full operational duties. Applications which do not address all of the relevant infirmities impacting upon an Officer could have the potential to minimise future claims.



It is also important that Officers note that the Legislation provides for applications to be made for both non hurt on duty (Section 8) and hurt on duty (Section 10).

Nothing in the legislation prevents an Officer from making their own application to STC for a medical discharge benefit.

### 13. What Happens if a Claim is Approved?

If the claim involves a period of absence the Officer will be notified in writing through their chain of command outlining the periods which have been approved as HOD. In relation to medical expenses, these will simply be paid by Allianz without an Officer receiving ongoing notice of these payments. Officers should continue to confirm with their treatment providers that their accounts are being paid.

Entitlements Whilst in NSW Police with an Approved HOD Claim

- When unfit for work altogether, base award wage including loading is paid to the injured Officer (NO overtime, penalties and some allowances).

Increments continue as per the Crown Employees (Police Officers - 2013) Award.

### 14. What Other Benefits Can I Claim Under HOD?

- **Reasonable Medical Expenses**  
– Ensure all treatment providers seek pre approval from Allianz by providing treatment plans to the Insurer for approval. Ensure a WorkCover certificate of capacity is obtained to reflect the treatment required for the injury.
- **Domestic and Nursing assistance**  
– For serious injuries where incapacity is above 15% whole person impairment.
- **Travel expenses to and from medical appointments** – If travelling by private motor vehicle, officers should keep a record of all travel (km's) to and from all associated treatment and appointments and if travelling by public transport officers should keep their receipts.
- **Property Damage**
- **Lump sum permanent impairment** under Section 12D *Police Regulation (Superannuation) Act 1906*.

### 15. What is a Section 12D Claim?

If an Officer has suffered a permanent impairment as a result of a HOD injury, they may be eligible for a lump sum gratuity payment under Section 12D of the Police Regulation

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(Superannuation) Act 1906. The injury must have occurred post 21st November 1979 to be compensated.

This section correlates to the lump sum compensation provision arising under sections 60, 66 & 67 of the Workers Compensation Act. The table of disabilities in the Workers Compensation Act stipulates the amount of compensation payable dependent upon the percent of permanent impairment/loss of use suffered. The Legislation also introduced thresholds for certain injuries, for example, 15% percent whole person impairment threshold to access lump sum compensation for psychological and psychiatric illnesses.

In June 2012 the NSW Government made significant amendments to Workers Compensation. Your Association successfully achieved an exemption for police officers being affected by any of the amendments. Therefore the original provisions of the Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998 remain for all injuries sustained as a police officer.

Members should always seek advice before pursuing a 12D compensation claim as it can have an impact on your ability to remain fully operational in the long term.

## 16. What Can I Claim Under S12D?

Section 12D provides for medical expenses, treatment expenses, and also lump sum compensation for loss of use/permanent impairment, provided the injury is duty related.

Compensation may also be paid for pain and suffering if:

- You have over 10% of the maximum possible amount for the permanent impairment in a 12D claim; and
- If the date of injury was on or after 1st July 1987.

Section 12D claims are considered by Allianz Insurance.

The Financial Legal Assistance Scheme provides assistance for Section 12D claims for ordinary financial members.

The following useful facts sheets relating to Section 12D claims are available on the State Super website [www.statesuper.nsw.gov.au](http://www.statesuper.nsw.gov.au)

- Facts Sheet 17 'Benefit for Permanent Impairment resulting from HOD injury (s.12D)'
- Facts Sheet 19 'Benefit for medical and related expenses resulting from HOD injury (S12D)'

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## 17. Common Law Claims

A common law claim is when an injured worker sues their employer in Court for damages. To be eligible to take action under common law, three criteria must be met:

1. You have suffered an injury or illness;
2. You are able to demonstrate negligence of the employer or a fellow employee. Negligence is a failure to take reasonable care of the worker; and
3. The injury can be causally related to a breach of duty of care.

**NB:** There is a three-year limitation period, which may be extended in certain circumstances.

A common law settlement may have an impact upon any ongoing HOD benefits. **You should always seek the advice of a Solicitor before pursuing these options.**

The Association's Financial Legal Assistance Scheme does NOT provide assistance for Common Law/Civil Claims.

## 18. What Happens When a HOD is Declined?

Written notification will be forwarded to the Officer's Commander whose responsibility it is to notify the Officer of the decision to decline the claim. The following appeal periods are available:

- If the declined claim includes a period of absence, a right of appeal exists to the Industrial Relations Commission of New South Wales. On receipt of the decline notification, Officers **MUST** lodge the appeal within **twenty eight (28)** days at the Industrial Relations Commission of New South Wales. If a claim is not lodged within 28 days it will be statute barred.

The Appeal notice can be faxed, posted or delivered to the Industrial Relations Commission of New South Wales. Association staff must **NOT** lodge these appeal forms on behalf of members. The relevant Notice of Appeal - **Police Hurt on Duty** may be downloaded from [www.lawlink.nsw.gov.au/irc](http://www.lawlink.nsw.gov.au/irc) The Association recommends that Officers telephone the Industrial Relations Commission of New South Wales to ensure the appeal notice has been received.

- If the decline is in relation to medical expenses under Section 12D, or a declined HOD medical discharge, the Officer has a right of appeal to the District Court. This appeal must be lodged within **six (6) months** of notification of the decision to decline your claim. If an Officer does not commence proceedings within this time frame the appeal will be statute barred.

Under the Financial Legal Assistance Scheme there are provisions for assistance to be granted to assist with HOD appeals through the Industrial

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Relations Commission of New South Wales and the District Court for ordinary financial members and in limited circumstances Associate Members.

It is important to remember that, in the event of a declined period of absence, an officer's own sick leave and then annual leave will be debited to cover the entire period of absence. The officer may find they are placed on sick leave without pay if their leave entitlements are exhausted.

Officers may be granted Special Sick Leave in the event they have exhausted all other leave entitlements and they should refer to the NSW Police Special Sick Leave Guidelines, or contact the Association, for more information.

Treatment expenses incurred up to the date of a decline decision will not be sought to be reimbursed but any treatment after the decline date will be the member's responsibility.

## 19. After Exit from NSW Police

What do I receive after I exit?

- Any accumulated leave entitlements owing from NSW Police, such as Annual Leave, Extended Leave and additional days.
- Superannuation - Officers are encouraged to contact their superannuation fund and seek financial advice in relation to their accumulated superannuation and pension entitlements.

## 20. What Happens to a HOD Claim After Exit from NSW Police?

### Ongoing Treatment Expenses

Allianz will continue to cover ongoing reasonable rehabilitation/treatment expenses for Hurt on Duty conditions. Any receipts/invoices should continue to be submitted directly to Allianz. Ongoing treatment plans from providers and treating doctors will still be required by Allianz to approve ongoing treatment.

It is important to note that Allianz can review treatment plans at any time by referring a member to an independent medical assessment to ensure treatment is still necessary.

### HOD Pensions

In relation to HOD/superannuation entitlements, Officers should obtain a copy of the Associations Pre 88 Medical Discharge Information Booklet for further information regarding medical discharge entitlements.

# List of Contacts

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## Police Association of NSW (Medical Entitlements Team)

Ph: (02) 9265 6777 or en 57071

Fax: (02) 9265 6789

Website: [www.pansw.org.au](http://www.pansw.org.au)

## Hurt on Duty Unit Human Resource Services

Level 7a

Police Headquarters

1 Charles Street

PARRAMATTA NSW 2124

Ph: (02) 8835 9219

Fax: (02) 8835 8347

## Allianz Australia Insurance Limited

GPO Box 4056

SYDNEY NSW 2001

Ph: 1300 788 946

Fax: 1300 788 942

## NSW Police Workforce Safety Directorate

### Injury Management Advisors

Ph: (02) 9285 3899

## Police Superannuation Scheme

State Super Scheme Administrator

Pillar Administration

PO Box 1229

WOLLONGONG NSW 2500

Ph: 1300 130 097

Fax: (02) 4253 1688

Website: [www.statesuper.nsw.gov.au](http://www.statesuper.nsw.gov.au)

## Industrial Relations Commission of New South Wales

Level 1, 47 Bridge Street

SYDNEY NSW 2000

Postal Address: GPO Box 3670,

SYDNEY, NSW, 2001

Ph: (02) 9258 0866

Fax: (02) 9258 0058

## Employee Assistance Program (24hr confidential counselling service)

Ph: 1300 667 197

## Psychology Section

Ph: (02) 9285 3434

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