

Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015

Senate Education and Employment Committee

12 May 2015

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Introduction

1. The Law Council of Australia is pleased to provide the attached submission to the Senate Standing Committee on Education and Employment Inquiry into the *Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015* (the Bill).
2. As outlined in **Attachment A**, the Law Council of Australia is the national peak body for the Australian legal profession.
3. The Law Council acknowledges the assistance of the Law Council's Sections in the preparation of this submission, particularly, the Commonwealth Compensation and Employment Law Committee of the Federal Litigation and Dispute Resolution Section and the Personal Injuries and Compensation Committee of the Legal Practice Section, which are comprised of specialists in the operation of compensation systems. It is noted that the latter Committee unanimously supports the submission, while some members of the former Committee oppose the submission in its present form.
4. The Bill represents the most fundamental amendment of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the SRC Act) since its introduction.
5. Although a number of the changes proposed by the Bill are likely to be beneficial for the scheme, the Law Council considers that some of the proposed changes are unnecessary and that there is no impetus for them. For example, changes to the eligibility provisions, rehabilitation requirements and new sanctions provisions are unnecessary given Comcare's existing powers. The Law Council notes that there is a lack of evidence of widespread misconduct or abuse of the system that would warrant such changes. As such there is no reason in principle for legislation, such as the Bill, which will cause the scheme to further diverge from the entitlements and features of State and Territory schemes.
6. It is noted that one of the objectives of the Bill is to reduce scheme costs. However the Bill seems to do little to improve the overall viability of the scheme in terms of its ratio of assets to liability. As noted below, the Bill represents a missed opportunity to address those issues.
7. In analysing the specific provisions of the Bill, the Law Council has adopted the structure of it and deals with each of the Schedules in turn.

Eligibility for Compensation and Rehabilitation

8. Schedule 1, Part 1 of the Bill will amend the SRC Act to restrict eligibility for compensation under the Comcare scheme.
9. The Bill does this in a number of ways, including by:
 - (a) widening the exclusion of injuries suffered as a result of reasonable administrative action in order to exclude injuries suffered as a result of "reasonable management action" more generally; and
 - (b) establishing a complex framework for determining whether employment contributed to an injury.

Management action

10. The Explanatory Memorandum (EM) states that the Bill will “widen the scope of the reasonable administrative action exclusion to encompass injuries suffered as a result of reasonable management action generally (including organisational or corporate restructures and operational directions) as well as the employee’s anticipation or expectation of such action being taken.” It is noted in the EM that the amendments implement the recommendations of the [SRC Act Review](#) conducted by Mr Peter Hanks QC.
11. But the recommendation of the review, referred to in the EM as recommendation 5.5, in fact states:

“I recommend that the SRC Act be amended so that the reasonable administrative action exclusion in s 5A(1) operates only where the reasonable administrative action taken in a reasonable manner in respect of the employee’s employment has contributed, to a significant degree, to the disease, injury or aggravation.”¹
12. Further, whilst the Bill apparently adopts recommendation 5.5, it does not adopt other recommendations from the Hanks Review which are intended to provide certainty, including recommendation 5.6 which states:

“I recommend that s 5A(2) be amended by removing the words “and without limiting that subsection”, so as to make it clear that the list in s 5A(2) is a complete list of the actions that are taken to be “reasonable administrative action”.”
13. Instead, and contrary to that recommendation, the Bill expands the notion of “reasonable administrative action” to virtually any management action by an employer. Whilst it may be accepted that an expansion of the exclusion to the definition of injury is a matter for Parliament, the absence of a limitation or qualification of what is meant by the phrase “management action” is likely to lead to uncertainty and complex litigation, such as in *Commonwealth Bank of Australia v Reeve* (2012) 199 FCR 463, in order to determine the distinction between an employee’s usual duties and “management action”.
14. Further, whilst the EM states that the amendment aligns the SRC Act with “reasonable management action” in the *Fair Work Act 2009* (FW Act), the only reference to “reasonable management action” in the FW Act is in s 789FD which uses that term, but does not define it. The inclusion of a complex definition of “management action” in the SRC Act, but not the FW Act, may lead to disharmony in outcomes as between the employment law and compensation law jurisdictions. Such inconsistency should be avoided.
15. The effect is particularly significant given the decision of *Hart v Comcare*, that if just one of the factors leading to the development of a condition was “reasonable administrative action”, then the claim will be excluded, even if that factor was a minor or insignificant one.

¹ Peter Hanks QC, *Review of the Safety- Rehabilitation and Compensation Act 1988*, Final Report, February 2013, Commonwealth of Australia, recommendation 5.5, page 9.

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16. It is noted that the Hanks Review was critical of this impact arising from *Hart* and suggested amendment to the Act to ensure it was a significant factor. Those recommendations have not been adopted in these amendments.
 17. The Law Council recommends that Parliament adopt an exhaustive definition of “management action” and harmonise the definition as between the SRC Act and the FW Act.

Determining a workplace injury

Designated injury

18. The EM states that “Schedule 1 amends the Act to alter eligibility requirements for compensation to align with similar requirements under some state and territory workers compensation schemes.”
19. It is noted that the definition of a designated injury in proposed section 5C, which appears in Schedule 1, Part 1, Clause 15 of the Bill, includes intervertebral disc injuries among the list of designated injuries. This is inconsistent with the approach in a number of other jurisdictions, where such injuries are dealt with under ordinary liability provisions. Normally there will need to be some environmental, as opposed to congenital, contribution to an injury to an intervertebral disc. This is distinguishable from a heart attack or a stroke which may simply occur due to the natural progression of an underlying condition. There is no reason in principle to deny liability for an injury to an intervertebral disc if it is suffered because of an employee’s work duties.
20. The Law Council recommends that Parliament remove an “injury to an intervertebral disc” from the proposed list of designated injuries.
21. Further, there are clearly circumstances where an injury in the brain or heart could occur as a result of trauma not associated with a pre-existing ailment.
22. The Law Council is also concerned that further conditions could be added by regulation rather than amending the Act itself (Schedule 1, Item 15 - Clause 5C(1)(g)). Additional injuries should be added to the legislation only by legislative amendment, not regulation, which should only be used for non-substantive changes.

Significant degree test

23. The EM states that the Bill aims to “distinguish more clearly between work and non-work related injuries by requiring certain matters be taken into account in determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee’s employment” (page ii).
24. Some of the amendments appear to require a decision-maker to apply value judgments at a level of abstraction that is not necessarily attainable without the assistance of expert evidence. For example, requiring a decision-maker to consider the probability that an employee would have been more or less likely to sustain a similar injury at a certain stage in their life is a matter that ought not to be left to the lay opinion of a decision-maker.
25. Further, it is noted that this approach appears to involve a departure from the “eggshell-skull” principle – that the employer must take an employee as they find them, with or without existing ailments or propensity toward particular types of injury.

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26. The Law Council recommends that Parliament impose a safeguard in Schedule 1, Part 1, Clause 11 of the Bill, requiring that, in the assessment of the probability that an employee would have suffered an ailment or aggravation, or a similar ailment or aggravation, at or about the same time or stage of an employee's life, a decision-maker must base his/her/its decision on medical evidence from an appropriately qualified specialist.

Rehabilitation

27. The EM states that the amendments in Schedule 2 of the Bill are based on recommendations 6.1, 6.5, 6.7, 6.8 and 6.13 of the Hanks Review.
28. It is noted that recommendation 6.2 has not been adopted. The recommendation was that the SRC Act be amended to include a system of provisional liability that allows an injured employee access to a maximum of 12 weeks of incapacity payments and medical costs of up to \$3,000. This was intended to support early intervention for workers while relevant information is gathered and obtained and applies in most other jurisdictions.
29. The Law Council welcomes the provision for early payment of medical expenses but believes this would be assisted by the adoption of the recommendation above.
30. Further, recommendations 6.3 and 6.4 were intended to improve return-to-work outcomes, which would appear to be consistent with the stated objective of the Bill,
31. The Law Council recommends that recommendations 6.2 to 6.4 of the Hanks Review be included in the Bill. Their inclusion is likely to lead to earlier returns to work, and thus reduce the human and financial impact of workplace injuries on the scheme.

Provisional medical expense payments

32. Schedule 4 of the Bill will enable relevant authorities to make provisional medical expense payments to a claimant, before a claim is determined.
33. The Law Council regards this as a positive amendment.

Medical services table

34. Comcare currently covers the reasonable costs of medical treatment obtained in relation to an injury. Schedule 4, s 16B, proposes a table of set fees for medical treatment. There is no requirement in the Bill that the amounts set in the table must be reasonable having regard to the actual costs of treatment. The risk is that there may be a significant gap between what Comcare will pay and what treatment providers will charge. This may lead to some injured workers being unable to afford to subsidise their treatment.
35. It is important that the Comcare scheme remains viable, but it is also a fundamental aspect of the scheme that injured workers can access treatment, in order to facilitate return to work, which is a clear objective of the scheme and this Bill.

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36. The Law Council recommends that Comcare continue to consider and pay reasonable costs for medical treatment required by injured workers on a case by case basis and that the medical services table and related provisions be excised from the Bill.
 37. Alternatively, if a medical services table is to be included then it should be subject to:
 - (a) an overriding requirement that standard fees set are reasonable, having regard to the reasonable market rates for the relevant services;
 - (b) consultation with the medical profession;
 - (c) regular review by Comcare to ensure that the fees rates remain fair; and
 - (d) regular review by the Office of the Auditor-General to ensure that the fees rates remain fair and unintended consequences do not occur.

Household/attendant care

38. The Law Council notes that Schedule 6, Item 16 - subsections 29A – 29C - dealing with household and attendant care services may increase costs to the scheme, as accreditation may disqualify most current domestic care arrangements, and injured workers may be inclined to engage commercial providers.
39. Further, the definition of catastrophic injury in section 4(1) should be specified in the Act not by Regulation, to promote consistency and certainty in the law. It is unclear why potentially lesser Parliamentary scrutiny should be required to amend the definition of catastrophic injury given the significant consequences that the amendments might have for the treatment of those with very serious injuries.
40. It is noted that the current financial cap on attendant care services is consistent with current entitlements. However, there is a concern that this may reflect only 50 per cent of the care costs for those who are catastrophically injured.²
41. As attendant care services and household services require an independent assessment by Comcare, it is not clear that this is an area of any significant or potential abuse of the scheme.
42. The Law Council recommends that a safety-net be included in the Bill for those who are not catastrophically injured to the effect that, following the expiry of 3 years, where they can demonstrate “special circumstances”, their entitlements will continue.

Absences from Australia

43. Schedule 7, Clause 9 makes it an offence of strict liability to fail to notify the compensable authority of an employee’s absence from Australia.

² As acknowledged by Commonwealth Treasury in its Draft Regulation Impact Statement on the National Injury Insurance Scheme for Workplace Accidents:
<http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2015/NIIS%20Workplace%20Accidents/Key%20Documents/PDF/NIIS-RIS-03-2015.ashx>

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44. It is unclear why it is necessary to impose a penalty under a strict liability regime for a failure to notify.
45. The Law Council considers the following principles should be applied to determine whether imposition of strict or absolute liability for an offence is justified:
- (a) There is a rebuttable presumption that, to establish guilt, fault must be proven for each physical element of an offence.³
 - (b) Instances where this presumption is overridden should be rare and the intention of the legislature to override it should be explicit and unambiguous. The defences of mistake of fact⁴ and intervening conduct or event⁵ should also be maintained.
 - (c) The prosecution should be required to prove that a person intended, or at the very least was reckless about, each physical element of an offence in order for a person to be found guilty of that offence. Strict and absolute liability should only be applied to less serious offences and where such an approach is necessary for the success of the relevant regulatory regime.⁶
 - (d) Strict or absolute liability offences should be of a category where failure to comply is both obvious and deserves liability on a strict liability basis,⁷ such as speeding and parking offences which are readily proven and easy to understand.
 - (e) Strict liability and absolute liability may also be appropriate when the only purpose of the fault element is to ensure that the creation of the offence is within the legislative power of the Commonwealth.⁸
46. It is not clear that any of these criteria have been met by this legislation and, accordingly, the Law Council recommends that Parliament not impose strict liability in the circumstances discussed above.
47. If the proposal is proceeded with, the Law Council recommends that an extensive transition period must be provided and the change should be widely advertised to ensure current and future recipients of benefits are aware of their obligations.

Incapacity payments

48. Schedule 9 alters the mechanism for calculating incapacity payments. The Law Council is of the view that this is an easier test to apply and understand.
49. The Law Council notes that proposed section 8(6) and (7) in Schedule 9 provide the mechanism for increases over time, but do not reflect a contemporary regime of entitlements (rather, they reflect entitlements as at the time of enactment of the SRC Act in 1988). The Law Council submits that these provisions should be updated to

³ Part 2.1, Division 2, Chapter 2 of the Criminal Code, particularly section 5.6.

⁴ *Criminal Code Act 1995* (Cth) s6.1

⁵ *Ibid* s 10.1

⁶ Law Council of Australia, *Policy Statement: Rule of Law Principles*, March 2011.

⁷ Law Council of Australia, Preliminary Submission to the Senate Standing Committee for the Scrutiny of Bills, Inquiry into the application of Absolute and Strict Liability Offences in Commonwealth Legislation, 2002, p. 7.

⁸ That is 'jurisdictional elements': Australian Government Attorney-General's Department, *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (2011).

reflect increases in the more general terms in order to better cater for contemporary employment practices and standards.

50. The proposed s 8(11) attempts to overcome the decision in *Comcare v Burgess* [2007] FCA 1663 (1 November 2007), which held that Comcare was liable to pay compensation to an employee during a period of suspension without pay. However, the provision is unnecessary given the rewording of the earlier provisions and should be deleted on this basis.
51. In terms of calculating incapacity payments, the basic rule remains 2 weeks. The Law Council notes that a significant amount of unnecessary litigation results from this requirement. The Law Council recommends that the basic rule should be 6 weeks.
52. At Clause 31 the Bill seeks to alter the "step-down" of compensation entitlements from 45 weeks to 13 weeks. The Law Council notes that public sector workers have enjoyed at least 26 weeks since 1971.
53. Nationally, 26 weeks is largely the rule and the Law Council favours some consistency in this area. The Law Council notes that, in 1988, the legislature intended that the SRC Act would provide a broad suite of entitlements as part of a trade-off for removal, or reduction, of common law rights. This appears to override that intention without a significant change in underlying policy.
54. It is noted that the Hanks Review actually stated that a stepdown to 80 per cent was appropriate. The Law Council remains of the view that the final step-down should be to that level.
55. The Law Council is also concerned that incapacity payments for existing recipients will be prospectively reduced if the Bill is passed. The Law Council considers that those whose payments have already been determined by the current formula should not have them reduced by reference to a new step-down rule.
56. In relation to Clause 6, the Law Council agrees that it is sensible in a "long tail" scheme that it extends not to age 65 but to pension age.
57. Clause 46 proposes the removal of a 5% deduction in the formula for calculating compensation payable to employees in receipt of superannuation. The Law Council welcomes this change.
58. The Law Council remains concerned that this is the only scheme that deducts superannuation entitlements from compensation entitlements and believes this is a matter that needs to be looked at in greater detail having regard to the closure of the original CSS and PSS schemes.

Redemptions

59. The Law Council welcomes the increase in the redemption amount.
60. However, the Law Council remains concerned that the provision is limited to incapacity payments, which means that any redemption attracts taxation at the rate as if the payment was made as income, all in one financial year, substantially reducing the real benefit of this entitlement.

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61. The Law Council believes there would be real financial benefits in allowing redemption, not just of incapacity entitlements, but other entitlements under the SRC Act, which would overcome the problem of erosion of benefits by taxation. It is also noted that the increase to retirement age, discussed earlier in this submission, will result in increasing cost to the scheme. Providing for redemptions at a higher level is likely to reduce the long-tail nature of the Comcare scheme and would therefore offset the cost of such an improvement, while giving increased flexibility both to Comcare and compensated workers.
 62. Although section 30 provides circumstances where Comcare or a licensee can initiate a redemption, it should be possible for an injured worker and/or Comcare to initiate redemption for a higher amount providing that there is no compulsion to accept it. It should also be provided that an injured worker must obtain legal and/or financial advice as to a proposed redemption, and if necessary an independent entity could assess any proposal as to its reasonableness. This would provide an important safety valve, limiting scheme costs, but also would be welcomed by many injured workers and employers under the existing scheme.

Legal Costs

63. Schedule 11 will allow Comcare to establish a schedule of legal costs that may be levied or claimed by claimants under the scheme. There is value in allowing legal costs for the reconsideration process. The Law Council welcomes the initiative as a means of resolving matters at an earlier stage.
64. The Law Council recommends that the scale of costs be based on a portion of the Federal Court scale, such as the scale adopted by the Administrative Appeals Tribunal. This should be fixed by Regulation.
65. The Law Council does not agree with the prospect of unsuccessful litigants having to pay Comcare's legal costs as proposed by clause 7 because it can be difficult to determine whether a claim is actually frivolous or vexatious. This is particularly so where an injured worker is self-represented, as "frivolous" and "vexatious" are terms of legal art that are not well-known in the general community. The Law Council recommends, instead, that costs be payable by an employee if the claim is fraudulent or dishonestly made.
66. The AAT already has power to dismiss claims that are frivolous or vexatious. The Law Council regards this as sufficient.

Permanent Impairment

67. The move to the proposed algorithmic model reduces the value of permanent impairment compensation. For example, a 10 per cent impairment under the current scheme would attract payment of around \$30,000. Under the proposed amendments, it would lead to a payment of \$8,750.
68. The Law Council does not accept the justification that in the interest of the less than 5 per cent who benefit from the algorithmic model that the remaining 95 per cent of claimants should have their entitlements reduced.
69. The Law Council believes an unintended consequence of this will be for injured employees meeting the 10 per cent threshold to, where possible, opt for common

law action. This is likely to lead to further litigation, contrary to the original intention of the SRC Act.

70. The Law Council welcomes the amendments to allow impairments to be combined.
71. However, in overcoming the decision in *Canute v Comcare*, the Bill reproduces the problem that *Canute* sought to overcome, namely that an additional 10 per cent impairment needed to be treated as a 10 per cent impairment for the purposes of the legislation rather than using the combined tables to, for example, make the impairment 10+10% or 19 per cent and the injured worker missing out in these circumstances.
72. The Law Council has no difficulty with the entitlement being worked out on the basis that the combined tables (i.e. at 19 per cent) but the threshold should not involve the combination of the original and subsequent condition.
73. Particularly given the more rigid approach to defining psychiatric conditions under the legislation the Law Council rejects the exclusion of secondary psychiatric conditions to the assessment of permanent impairment.
74. The Law Council welcomes the increase of the permanent impairment cap to \$350,000, which is comparable to amounts in other schemes.

Sanctions

75. The Bill proposes to establish a new sanctions regime in Schedule 15, which includes a three-strikes policy and an ultimate sanction of permanent cancellation of benefits. The Law Council strongly supports initiatives to encourage rehabilitation and return to work.
76. However, the provisions are unnecessary because compensation payments are already suspended during periods of non-compliance. Establishing a punitive three-strikes policy, with the ultimate sanction being lifetime exclusion from the scheme, does not seem to be necessary given a lack of evidence of anything more than isolated instances of non-compliance, which can be adequately dealt with under the present scheme. The Law Council considers the present system should remain, including current sections 36 and 37, which provide a more balanced suite of obligations.
77. The Law Council is concerned that those with, for example, severe psychiatric injuries will have difficulties with the return to work process because of the nature of their injury. The Law Council is concerned that the proposed process itself may further exacerbate existing medical conditions through the creation of additional stress for injured workers.
78. It is also noted that the sanctions regime proposed in Schedule 15 are inconsistent with comparable workers compensation schemes in other jurisdictions.

Wasted opportunity

79. The Law Council believes that the fundamental problem with the Comcare scheme is its long-tail nature.

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80. This inevitably leads to projections of liabilities exceeding assets and the call for benefits to be reduced in response.
 81. This has been the experience of the Comcare scheme since its inception but also other long-tail schemes such as in South Australia and New South Wales.

Redemptions

82. The Law Council submits that redemptions provide an important “safety valve” for the resolution of disputes and issues between the parties. A major disadvantage of the SRC Act compared to other legislative schemes is that it does not afford employees and employers the opportunity to resolve disputes through lump sum settlements that reflect future entitlements, in circumstances where the employee has received independent financial and legal advice as to the reasonableness and consequences of a lump sum settlement.
83. The Law Council considers there must be a point where there are administrative savings to be made and the injured worker no longer wishes to be involved with the administering authority. This should be acknowledged in any modern compensation scheme.
84. However, it is important, given the imbalance between the bargaining position of the administering authority and the injured employee, that there be proper safeguards to ensure any redemptions are determined fairly and reasonably. The Law Council suggests a two tiered approach:
 - (a) The first tier would be up to a weekly amount of \$150.00 (subsequently indexed) and would operate as section 30 currently does – namely that the administering authority would be able to automatically redeem, and the injured employee would have the right to challenge that decision. The same preconditions would apply.
 - (b) The second tier would apply to amounts over \$150 per week, whereby an injured employee should be able to redeem entitlements on reaching agreement with the administering authority, on the basis that:
 - (i) his/her condition had stabilised and was likely to continue at that level;
 - (ii) at least 6 months has passed since the date of injury;
 - (iii) the administering authority is satisfied that the injured worker has received proper financial and legal advice as to the implications of the redemption; and
 - (iv) it is appropriate in the circumstances to do so.
85. For the reasons outlined above, it would be appropriate that redemption of entitlements include payment of medical and all other amounts under the SRC Act.

Common law entitlements

86. As noted in the Issues Paper, the cap on general damages under the Comcare scheme has not been revised in 24 years. Within that period, Australia has gone through substantial change in terms of costs of living and average weekly earnings. It is unfathomable that a cap set in 1988 could be considered a reasonable assessment of general damages in 2012. Caps applicable under comparable State

and Territory schemes are substantially higher and demonstrate that the SRC Act is out of step in relation to common law benefits.

87. The Law Council notes that 'hybrid' compensation schemes are among the best performing schemes in Australia and generally outperform schemes which restrict common law entitlements, at every level.
88. For example, in 2008 the New Zealand Accident Compensation Scheme announced unfunded liabilities of \$23.175 billion, roughly equivalent to 17.1 per cent of New Zealand's Gross Domestic Product. Such a deficit would be considered calamitous in the Australian context, with obvious political ramifications. In New Zealand, this has led to significant increases in compulsory contributions to its various injury compensation 'accounts', as well as moves to further limit benefits to injured people.
89. Similarly, the South Australian WorkCover scheme, previously did not allow any access to common law. Before the SA Government announce a restructure of the scheme and reintroduction of common law, the Scheme had declared unfunded liabilities of almost \$1.4 billion, notwithstanding that SA WorkCover charged employers the highest compulsory contributions in the country.⁹ WorkCover SA's financial position had in fact worsened despite substantial cuts to workers entitlements implemented in 2010.
90. In contrast, Queensland WorkCover, which allows virtually unrestricted access to common law, is among the best performing schemes in the country, with the second-lowest premiums, the lowest disputation rate, highest assets to liabilities ratio and is among the better performing schemes in terms of return to work outcomes.¹⁰
91. The Law Council considers any assertion that common law compensation has a deleterious impact on health and recovery outcomes is unsustainable, having regard to the actual performance of existing schemes.
92. The Law Council recommends that Parliament removes existing restrictions on redemptions and common law payments to ensure the long-term viability of the Comcare scheme.

Summary

93. In light of the above the Law Council recommends, if the Bill is to be approved by the Senate Committee, that the Bill be amended to:
 - (a) Include a clearer definition of "management action", to avoid unnecessary uncertainty, leading to costly litigation.
 - (b) Ensure the definition in the SRC Act is consistent with the definition of the term in the FW Act, which currently does not define management action.
 - (c) remove an "injury to an intervertebral disc" from the proposed list of designated injuries

⁹ WorkCover SA, Annual Report 2011-12

¹⁰ Workplace Relations Ministers Council, Comparative Performance Monitoring Report, 14th edition, October 2012, Commonwealth of Australia, Chapters 3 and 4.

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- (d) impose a safeguard in Schedule 1, Part 1, Clause 11 of the Bill, requiring that, in the assessment of the probability that an employee would have suffered an ailment or aggravation, or a similar ailment or aggravation, at or about the same time or stage of an employee's life, a decision-maker must base his/her/its decision on medical evidence from an appropriately qualified specialist.
 - (e) adopt recommendations 6.2-6.4 of the Hanks Review with respect to rehabilitation.
 - (f) remove the medical services table or, if it is to be included, to subject it to:
 - (i) an overriding requirement that standard fees set are reasonable, having regard to the reasonable market rates for the relevant services;
 - (ii) consultation with the medical profession;
 - (iii) regular review by Comcare to ensure that the fees rates remain fair; and
 - (iv) regular review by the Office of the Auditor-General to ensure that the fees rates remain fair and unintended consequences do not occur.
 - (g) provide for the definition of "catastrophic injury" in the SRC Act, not by regulation, with respect to household/attendant care in Schedule 6.
 - (h) increase the existing financial cap on attendant care services to reflect current and realistic market rates, particularly given the proposed accreditation scheme is likely to exclude the majority of existing domestic care arrangements.
 - (i) include a safety net for non-catastrophically injured people, subject to "special circumstances" at the conclusion of the 3-year cap.
 - (j) remove Schedule 7 from the bill or, if it is included, provide for a long transition period in order to ensure those covered by the scheme are informed about their strict legal obligation.
 - (k) Remove proposed section 8(11) in Schedule 9 of the Bill, with respect to the payment of incapacity payments during periods of suspension from work.
 - (l) Change the rule for calculating incapacity payments from 2 weeks to 6 weeks.
 - (m) Remove Clause 31, of Schedule 9, which will lower the step-down in incapacity payments.
 - (n) Amend Schedule 10 to extend redemptions to all entitlements under the SRC Act.
 - (o) Remove Schedule 11, in relation to legal costs, or provide that the amounts of legal costs should be fixed by regulation.
 - (p) Amend Schedule 12 to ensure there is no reduction in existing entitlements for permanent impairment.
 - (q) Remove Schedule 15, as it is unnecessary.

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- (r) Ensure the Parliament seizes the opportunity to remove existing restrictions on redemptions and common law payments to ensure the long-term viability of the Comcare scheme.

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2015 Executive are:

- Mr Duncan McConnel, President
- Mr Stuart Clark, President-Elect
- Ms Fiona McLeod SC, Treasurer
- Dr Christopher Kendall, Executive Member
- Mr Morry Bailes, Executive Member
- Mr Ian Brown, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.