

CHAPTER 1

Background

Reference

1.1 On 25 March 2015, the Hon. Luke Hartsuyker, MP, Assistant Minister for Employment, introduced the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (the bill) in the House of Representatives.¹ On 26 March 2015, the Senate referred the provisions of the bill to the Senate Education and Employment Legislation Committee (the committee) for inquiry and report by 16 June 2015.²

Conduct of the inquiry

1.2 Details of the inquiry were made available on the committee's website. The committee also advertised the inquiry in *The Australian* and wrote to key stakeholder groups, organisations and individuals to invite submissions.

1.3 The committee received 30 submissions as detailed in Appendix 1.

Purpose and overview of the bill

1.4 The Comcare Scheme (the scheme) was established by the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) to provide workers' compensation to Australian and Australian Capital Territory government employees (collectively known as premium payers) and the employees of 33 licensees, comprising current and former Commonwealth authorities and private corporations, who self-insure under the scheme.³

1.5 The SRC Act also applies to members of the Australian Defence Force (ADF) injured during defence service before 1 July 2004. Coverage for injuries attributable to defence service on or after this date is provided by the *Military Rehabilitation and Compensation Act 2004* (MRC Act). Defence-related claims under the SRC Act and MRC Act are administered by the Department of Veterans' Affairs on behalf of the Military Rehabilitation and Compensation Commission. ADF members and veterans covered by the SRC Act will not be affected by the reforms in the bill except for claims for permanent impairment.⁴

1 *Votes and Proceedings No. 110*, 25 March 2015, p. 1233.

2 *Journals of the Senate No. 90*, 26 March 2015, p. 2459.

3 The Hon Luke Hartsuyker MP, Assistant Minister for Employment, Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, Second reading speech, *House of Representatives Hansard*, 25 March 2015, p. 3349; Department of Employment, *Submission 22*, p. 4.

4 Department of Employment, *Submission 22*, p. 4.

1.6 Since 1988 important changes have occurred in both work and health practices and in community expectations. The bill seeks to reform and modernise the scheme to meet the current needs of employees, employers and workplaces.

1.7 In 2012 the previous government commissioned the SRC Act Review (the Review) by Mr Peter Hanks, QC and Dr Allan Hawke AC. Mr Hanks reviewed the SRC Act with respect to workers' compensation benefit structures, rehabilitation and return-to-work provisions. Dr Hawke reviewed the performance of workers' compensation under the SRC Act, in particular the governance and financial frameworks.⁵

1.8 The government has developed a two stage process to reform the SRC Act, which includes recommendations made by Mr Hanks and Dr Hawke. The first stage of reform focussed on:

- expanding eligibility for companies to self-insure under the SRC Act by removing the competition test and enabling corporations operating and employing in two or more states and territories to self-insure under the SRC Act and have coverage under the Commonwealth's work health and safety regime;
- enabling group licences to be issued to an eligible group of corporations; and
- excluding compensation for injuries occurring during recess breaks away from work and injuries resulting from serious and wilful misconduct.⁶

1.9 The first stage of reforms was included in the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 which is currently before the Senate.⁷

1.10 The second stage of reforms are contained in this bill and focus on improving the operation of workers' compensation under the SRC Act by:

- improving return-to-work outcomes for injured workers;
- improving the focus on early intervention and health outcomes of injured workers; and
- improving administration of the scheme.⁸

5 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Amendments (Improving the Comcare Scheme) Bill 2015, *Regulation Impact Statement*, March 2015, p. 13.

6 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Amendments (Improving the Comcare Scheme) Bill 2015, *Regulation Impact Statement*, March 2015, p. 13.

7 See Senate Education and Employment Legislation Committee, *Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 [Provisions]*, July 2014.

8 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Amendments (Improving the Comcare Scheme) Bill 2015, *Regulation Impact Statement*, March 2015, p. 13.

1.11 The assistant minister stated that the reforms in the bill have a stronger focus on rehabilitation, target support for injured employees, improve the scheme's integrity and sustainability, and address negative public perceptions of the scheme within the community by introducing safeguards to protect against injured employees making claims for conditions unrelated to work and undertaking non-evidence based treatments:

Using the recommendations from the review as a starting point, building on feedback from stakeholders and also adopting some reforms that have been advanced by state Labor governments, this government is proposing a package of reforms that will rehabilitate people and get them back to work, target support and improve the scheme's integrity and viability. The reforms will also ensure that loopholes in the legislation that allow people to take advantage of the scheme are closed.⁹

1.12 The bill makes other changes to the SRC Act, including changes to improve the efficiency and cost effectiveness of the scheme and to align the scheme with some state and territory workers' compensation schemes.¹⁰

1.13 The bill also amends the *Military, Rehabilitation and Compensation Act 2004*, *Safety, Rehabilitation and Compensation Act 1988* and *Seafarers Rehabilitation and Compensation Act 1992* in relation to the vocational nature of rehabilitation services and return to work outcomes.

1.14 In addition, the bill amends the *Administrative Decisions (Judicial Review) Act 1977* to provide that decisions relating to compensation paid for detriment caused by defective administration are not subject to review.

Structure of the bill

1.15 The bill comprises 17 schedules.

Schedule 1	eligibility requirements for compensation and rehabilitation
Schedule 2	rehabilitation and return to work
Schedule 3	integrity and financial viability
Schedule 4	provisional medical expense payments
Schedule 5	compensation for medical expenses
Schedule 6	compensation for household/attendant care services
Schedule 7	suspension of compensation where absent from Australia
Schedule 8	entitlements while on compensation leave
Schedule 9	calculation of incapacity payments
Schedule 10	compulsory redemption threshold
Schedule 11	legal costs
Schedule 12	permanent impairment and non-economic loss

9 The Hon Luke Hartsuyker MP, Assistant Minister for Employment, Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, Second reading speech, *House of Representatives Hansard*, 25 March 2015, p. 3349.

10 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. i.

Schedule 13	liability of single employer licence
Schedule 14	apportionment of liability for gradual onset injuries
Schedule 15	sanctions for employee non-compliance
Schedule 16	exclusion of schedules 1–15 from defence-related claims
Schedule 17	technical provisions

Schedule 1: tightening eligibility requirements for compensation and rehabilitation

1.16 Schedule 1 tightens the eligibility requirements for compensation under the SRC Act to distinguish more clearly between work and non-work related injuries.¹¹ This change reflects the underlying purpose of a workers' compensation scheme which is to provide support for workers who suffer from occupational injury and disease.¹²

1.17 Under the current scheme if the culmination of a condition occurs at the workplace it is sufficient for workers' compensation liability to exist.¹³ Schedule 1 alters the eligibility criteria by amending the definition of injury in subsection 5A(1) of the SRC Act to ensure that compensation under the scheme is only payable where either an underlying condition or the culmination of that condition is significantly contributed to by the employee's employment.¹⁴ As such, an employer's liability will no longer extend to diseases or injuries, such as heart attacks, strokes and spinal disc ruptures, that are manifestations of underlying genetic or lifestyle factors which occur in the workplace but have no significant basis in employment.¹⁵

1.18 The committee notes the amended eligibility criteria is based on the Review recommendation that:

...the SRC Act be amended so that incidents that are a manifestation of an underlying disease (such as heart attacks, strokes, spinal disc ruptures caused by degenerative disease and similar phenomena) will be covered for workers compensation purposes on the same basis as a 'disease'— that is, where the incident was contributed to, to a significant degree, by the employee's employment.¹⁶

1.19 Schedule 1 also increases the threshold for perception-based disease claims to ensure that an employer's liability does not extend to diseases or injuries that are

11 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. ii.

12 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Statement of Compatibility with Human Rights*, p. 17.

13 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Statement of Compatibility with Human Rights*, p. 17.

14 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, Schedule 1, ss. 5A(1).

15 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Statement of Compatibility with Human Rights*, p. 17.

16 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendation 5.3, p. 9.

manifestation of underlying mental health conditions which manifest in the workplace but have no significant basis in employment.¹⁷

1.20 The committee notes that this amendment gives effect to the Review recommendation 'that an employee's perception of a state of affairs will only provide a connection with employment where that perception has a reasonable basis'.¹⁸

1.21 The other key measure in Schedule 1 widens the scope of the 'reasonable administrative action' exclusion. This ensures employers can take reasonable action in managing their workplace. It also ensures that an injury arising from an employee's belief that they may be subject to reasonable management action will not be compensable.¹⁹

1.22 The committee notes that this measure aligns the SRC Act with 'reasonable management action' in the bullying provisions in the *Fair Work Act 2009*²⁰ and is based on the Review recommendation 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.²¹

Schedule 2: enhancing rehabilitation and return to work outcomes

1.23 Schedule 2 amends the SRC Act to emphasise the vocational rather than medical nature of rehabilitation services under the scheme. It introduces measures to strengthen employer and employee responsibilities to improve employee rehabilitation and work outcomes.²² These measures are based on Review recommendations 6.1, 6.5, 6.7, and 6.8.²³

17 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Statement of Compatibility with Human Rights*, p. 19.

18 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendation 5.2, p. 9.

19 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Statement of Compatibility with Human Rights*, p. 18.

20 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. ii.

21 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, p. 9.

22 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. ii.

23 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendations 6.1, 6.5, 6.7, and 6.8, pp 9–10.

1.24 The bill provides that a workplace rehabilitation plan may require an employee to carry out specified activities, and that the obligation to do so becomes part of the employee's responsibilities under the plan.²⁴

1.25 Based on Review recommendation 6.13,²⁵ Schedule 2 also combines the current 2-step process for the development of rehabilitation programs into a single process. This ensures that workplace rehabilitation is delivered on a service continuum of assessment, need, planning, active implementation, review and evaluation.²⁶

1.26 Under section 40 of the Act employers currently have a duty to provide 'suitable employment' to injured employees who have undertaken or are undertaking a rehabilitation program. Based on Review recommendation 6.16,²⁷ Schedule 2 expands the definition of 'suitable employment'. Employment with any employer who is not the Commonwealth or a licensee (including self-employment) may now be considered 'suitable employment'.²⁸

1.27 In addition, Schedule 2 provides relevant authorities, including Comcare or self-insured licensees, with the discretion to perform work readiness assessments that assess an injured employee's capacity to undertake 'suitable employment'.²⁹

Schedule 3: improving the scheme's integrity and financial viability

1.28 Schedule 3 contains measures to improve the integrity of the current scheme and to ensure its financial viability into the future. Based on several Review recommendations,³⁰ the amendments in Schedule 3 would:

- require third parties to indemnify compensation payers where circumstances give rise to both an obligation to pay compensation under the SRC Act and a liability on the part of the third party to pay damages or State compensation;
- provide more timely and responsive services and support for injured employees by requiring employers to forward claims to Comcare within 3

24 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, s 36A.

25 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendation 6.13, p. 10.

26 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. ii.

27 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendation 6.16, p. 11.

28 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. iii; Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, ss. 4(1).

29 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Statement of Compatibility with Human Rights*, p. 20.

30 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendations 9.2, 9.17, 9.20 and 10.1, pp 15–17.

days of receipt and specifying time limits in relation to the determination of compensation claims and the reconsideration of claims;

- enhance a relevant authority's information gathering powers in relation to compensation claims and the administration of liabilities aimed to notify their relevant authority of any change to their circumstances;
- require licensees to notify Comcare of any proceedings they commence under the SRC Act and empower Comcare to request documents relevant to any proceedings brought against, or instituted by, a licensee;
- require licensees (and corporations covered by a group employer licence) to comply with applicable Commonwealth, State and Territory laws with respect to the safety, health and rehabilitation of workers;
- enable Comcare to recover overpayments of compensation that have been made to an employer by Comcare; and
- enable Comcare to pay compensation for detriment caused by defective administration.³¹

Schedule 4: provisional medical expense payments

1.29 Schedule 4 enables a relevant authority to make provisional medical expense payments capped at \$5 000 in respect of an alleged injury before a claim is determined. The amendment is based on Review recommendation 6.2³² as well as similar provisions in the NSW workers' compensation scheme.³³

Schedule 5: ensuring compensated medical expenses are evidence-based

1.30 Schedule 5 makes several changes to the type and amount of medical expenses covered by Comcare, and requires Comcare and licensees to consider certain matters in determining whether medical treatment was reasonably obtained.

1.31 Schedule 5 imposes a more rigorous set of requirements to the process of determining compensation in respect of medical expenses incurred by an injured employee under section 16 of the SRC Act. As recommended in the Review,³⁴ the amendments tighten the current requirements to ensure medical expenses will only be compensated for when provided by a registered health practitioner. In addition, the

31 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. iii.

32 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendation 6.2, p. 9.

33 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. iii.

34 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendations 7.21, 7.24–7.27, 7.28, pp 13–14.

provision of medicines (including schedule 8 medicines) will only be compensated for when provided by appropriately qualified persons.³⁵

1.32 New section 16A empowers Comcare to establish Clinical Framework Principles by legislative instrument to assist in determining whether a medical treatment is reasonably obtained. New section 16B empowers Comcare to establish by legislative instrument a medical services table that would limit the level of compensation payable by a relevant authority in respect of medical treatment and examinations to specified amounts in either a medical services table or a medical examination rates determination.³⁶

1.33 Schedule 5 also enables Comcare to:

- by legislative instrument, identify accredited healthcare practitioners for the purposes of the SRC Act;
- disclose information relating to medical treatment obtained in relation to an injury suffered by an employee to a professional disciplinary authority; and
- by legislative rules, approve specified types of medical treatment obtained by an employee outside Australia.³⁷

Schedule 6: addressing the shortcomings of compensation for household/attendant care services

1.34 Currently, under section 29 of the SRC Act, compensation is payable for household services and attendant care services. 'Household services' are services of a domestic nature (including cooking, house cleaning, laundry and gardening services) that are required for the proper running and maintenance of the employee's household. 'Attendant care services' are services that are required for the essential and regular personal care of the employee (other than household services, medical or surgical services or nursing care), such as help with bathing and dressing.³⁸

1.35 The Review identified a number of shortcomings in the current provisions concerning the determination of compensation payable for household or attendant care services.³⁹ Schedule 6 seeks to implement a number of these recommendations by introducing a requirement that attendant care services be compensable only where they are provided by a registered provider and where there has been an independent

35 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Statement of Compatibility with Human Rights*, pp 34–35.

36 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p. 43.

37 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p. 43.

38 *Safety, Rehabilitation and Compensation Act 1988*, ss. 4(1).

39 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendations 7.33, 7.35–7.37, pp. 14–15.

assessment of an injured employee's need for household services and/or attendant care service.⁴⁰

1.36 Amendments relevant to household and attendant care services for employees with catastrophic injury will comply with minimum benchmarks set for workers' compensation with the National Injury Insurance Scheme.⁴¹ As such, Schedule 6 would:

- establish a tiered approach to the payment of compensation for household and attendant care services, depending on whether the employee's injury was catastrophic, and limit the period for which compensation is payable for employees with a non-catastrophic injury;
- require an independent assessment of an injured employee's need for household or attendant care services; and
- require attendant care services to be provided by accredited, registered or approved providers.⁴²

Schedule 7: Compensation for absences from Australia for non-work purposes

1.37 Currently the SRC Act places no limitations on payment of compensation to a person outside Australia.⁴³ This stands in contrast, to the *Social Security Act 1991* which imposes quite stringent controls on payment of pensions and allowances outside Australia and some other state and territory compensation schemes.⁴⁴ In order to better align the Comcare scheme with these controls, and based on Review recommendation 7.17, Schedule 7 proposes to:

- amend the SRC Act to allow for the suspension of compensation where an injured employee is absent from Australia for non-work related purposes for a period of more than 6 weeks; and
- enhance the notification requirements for compensation recipients proposing to leave Australia.⁴⁵

Schedule 8: accrual of leave or absence entitlements while on compensation leave

1.38 Currently the SRC Act allows an employee absent from work on compensation leave to accrue long service, sick and recreation leave entitlements.⁴⁶

40 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. iv.

41 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. iv.

42 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. iv.

43 *Safety, Rehabilitation and Compensation Act 1988*, s. 120.

44 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. iv.

45 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. iv.

Schedule 8 amends section 116 of the SRC Act to provide that an employee is no longer to take or accrue leave provided by the National Employment Standard while on compensation leave.⁴⁷ The amendment is consistent with the proposed amendments in the Fair Work Amendment Bill 2014 currently before Parliament.

Schedule 9: calculating incapacity payments

1.39 Schedule 9 ensures that the calculation of incapacity payments accurately reflect the employee's earnings prior to injury, in part by changing the concept of 'normal weekly earnings' in section 8 of the SRC Act to 'average weekly remuneration' to better reflect an employee's income.⁴⁸

1.40 Further, pursuant to Review recommendations,⁴⁹ the proposed amendments introduce 'step down' provisions to taper the amount of weekly incapacity payments an injured employee is entitled to; and link incapacity payments to the pension age, rather than cutting off those payments at a set age.⁵⁰

1.41 Schedule 9 also removes the current 5 per cent deduction from weekly incapacity payments to employees who are accessing superannuation benefits as public servants are no longer required to contribute to their own superannuation accounts.⁵¹

1.42 As recommended by the Review,⁵² new subsection 8(11) provides that a suspended employee is taken to be employed during the suspension for the purposes of subsection 8(10) of the Act. The effect of this provision is that the compensation paid to an injured worker who is suspended without pay would be reduced to zero.⁵³

1.43 Schedule 9 also introduces the concept of 'applicable earnings' which is the amount that an employee is deemed to be capable of earning. Applicable earnings are

46 *Safety, Rehabilitation and Compensation Act 1988*, s. 116.

47 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. iv.

48 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. 58.

49 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendations 7.13, 7.16(a), pp 12–13.

50 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. 58.

51 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. 67.

52 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendation 7.11, p. 12.

53 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, pp 62–63.

used as part of a formula to reduce the amount of compensation paid to an injured employee.⁵⁴

Schedule 10: compulsory redemption of compensation threshold

1.44 The compulsory redemption of compensation involves the payment of a lump sum amount to an employee in lieu of the employee's ongoing weekly incapacity payments.⁵⁵ Currently, the compulsory redemption threshold is \$110.65.⁵⁶ The amendments in Schedule 10 would increase this amount to \$208.91 to align it with the *Military Rehabilitation and Compensation Act 2004*.⁵⁷

Schedule 11: legal costs

1.45 Schedule 11 proposes to make amendments to control and reduce costs under the Comcare scheme by capping the amount of legal costs able to be awarded by the Administrative Appeals Tribunal (AAT). The Schedule of Legal Costs will be prescribed by Comcare by disallowable legislative instrument.⁵⁸

1.46 In addition, Schedule 11 would:

- empower relevant authorities to reimburse costs incurred by a claimant in connection with the favourable reconsideration of a determination after commencement, subject to certain conditions; and
- require all parties to a proceeding (including employers and third parties) to disclose any evidence that they intend to adduce at least 28 days prior to the first day of hearing.⁵⁹

Schedule 12: permanent impairment compensation to include non-economic loss

1.47 Schedule 12 makes a number of changes to the way that compensation for permanent impairment is calculated. Certain changes would increase compensation to particular injured workers, while other changes will result in reduced compensation.

1.48 Compensation for permanent impairment and non-economic loss is paid as a lump sum, separate from, and additional to, weekly incapacity payments payable to an injured employee under the SRC Act.⁶⁰ The amendments in Schedule 12 seek to

54 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, pp 65–66.

55 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p. 76.

56 *Safety, Rehabilitation and Compensation Act 1988*, s. 30 and 137.

57 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p.76.

58 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p. 77.

59 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p. 77.

60 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p. 81.

combine the compensation payments for permanent injury⁶¹ and non-economic loss⁶² into one single permanent impairment payment under section 24 of the SRC Act and increase the maximum permanent impairment payment to \$350 000.⁶³

1.49 Pursuant to Review recommendation 8.5,⁶⁴ Schedule 12 also introduces a new method for calculating permanent impairment compensation that permits a more equitable distribution of compensation based on the level of permanent impairment.⁶⁵

1.50 Based on Review recommendation 8.2,⁶⁶ the amendments would also treat multiple injuries arising out of the same incident as a single injury so that the impairment resulting from that single injury can be combined to achieve a whole person impairment value.⁶⁷

1.51 However, the amendments also reduce the level of permanent impairment compensation for:

- employees with a permanent impairment resulting from a single injury (or multiple injuries arising out of the same incident or state of affairs) of greater than 10 per cent and less than 40 per cent; and
- employees with multiple injuries arising from one incident where each of the injuries reach the applicable threshold.⁶⁸

1.52 Schedule 12 would also exclude access to permanent impairment compensation for secondary psychological or psychiatric ailments and injuries.⁶⁹

Schedule 13: liability of single employer licence

1.53 Schedule 13 amends the SRC Act as it will be amended by the Safety, Rehabilitation and Compensation Amendment Bill 2014.⁷⁰ Specifically, Schedule 13

61 *Safety, Rehabilitation and Compensation Act 1988*, s. 27.

62 *Safety, Rehabilitation and Compensation Act 1988*, s. 24.

63 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p. 81.

64 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendation 8.5, p. 15.

65 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p. 81.

66 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review, *Report*, 22 February 2013, Recommendation 8.2, p. 15.

67 Australian Government, Department of Employment, Safety Rehabilitation and Compensation Act Review Report, 28 March 2014, Recommendations 8.2, p. 15.

68 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Statement of Compatibility with Human Rights*, p. 47.

69 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p. 81.

70 See: Senate Education and Employment Legislation Committee, *Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 [Provisions]*, July 2014.

clarifies the operative of effect of the amendments as they relate to acceptance of liability and management of compensation claims. The amendments provide that:

a single employer licence for an eligible corporation or group employer licence for a Commonwealth authority must authorise acceptance of liability or management of claims, or both.⁷¹

Schedule 14: apportionment of liability for gradual onset injuries

1.54 Schedule 14 to the Bill provides that compensation responsibilities for gradual onset injuries will rest with the most recent employer where employment by two or more employers covered by the SRC Act has significantly contributed to the gradual onset injury.⁷²

Schedule 15: sanctions for employee non-compliance

1.55 Schedule 15 identifies key requirements imposed on an injured worker by the SRC Act are 'obligations of mutuality', and that a failure to meet such obligations of mutuality might include the suspension and cancellation of workers compensation (including on a permanent and ongoing basis).⁷³

Schedule 16: exclusion of schedules 1–15 from defence-related claims

1.56 Schedule 16 amends the SRC Act to ensure that the amendments made by Schedules 1 to 15 and 17 to the Bill, with minor exceptions, do not apply to defence-related claims. This is because under Part XI of the SRC Act, defence-related claims are administered by the Military Rehabilitation and Compensation Commission and the Department of Veterans' Affairs, rather than Comcare.⁷⁴

Schedule 17: technical provisions

1.57 Schedule 17 amends the SRC Act to define a number of terms that are used in the various schedules to the bill.

Compatibility with human rights

1.58 The bill engages the following human rights: the right to equality and non-discrimination; the rights of persons with disabilities; the right to social security; the right to work and rights at work; the right to health; the right to privacy; and the right to a fair hearing.⁷⁵

71 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, p. 90.

72 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p. 92.

73 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, pp v–vi.

74 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Explanatory Memorandum*, Notes on clauses, p. 109.

75 Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, *Statement of Compatibility with Human Rights*, pp 4–5.

1.59 The bill's statement of compatibility with human rights states that the bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.⁷⁶

Financial impact statement

1.60 The explanatory memorandum states that the bill will have no financial implications.⁷⁷

Acknowledgement

1.61 The committee thanks those organisations and individuals who contributed to the inquiry by preparing written submissions.

76 Statement of Compatibility with Human Rights, Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, p. 1.

77 Explanatory Memorandum, Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, p. vii.