

The Senate

Education and Employment
Legislation Committee

Safety, Rehabilitation and Compensation
Legislation Amendment (Exit Arrangements)
Bill 2015 [Provisions]

May 2015

© Commonwealth of Australia

ISBN: 978-1-76010-203-6

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website: <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

This document was produced by the Senate Standing Committee on Education and Employment and printed by the Senate Printing Unit, Parliament House, Canberra.

MEMBERSHIP OF THE COMMITTEE

Members

Senator Bridget McKenzie, Chair, Nats, VIC

Senator Sue Lines, Deputy Chair, ALP, WA

Senator Deborah O'Neill, ALP, NSW

Senator Lee Rhiannon, AG, NSW

Senator the Hon Brett Mason, LP, QLD (until 15 April 2015)

Senator the Hon Arthur Sinodinos AO, LP, NSW (from 3 March 2015)

Secretariat

Ms Julia Agostino, Secretary

Dr Patrick Hodder, Acting Principal Research Officer

Ms Chiara Edwards, Research Officer

Ms Elise Williamson, Administrative Officer

Ms Sophie Wolfer, Administrative Officer (until 31 March 2015)

PO Box 6100
Parliament House
Canberra ACT 2600

Ph: 02 6277 3521
Fax: 02 6277 5706
E-mail: eec.sen@aph.gov.au

TABLE OF CONTENTS

MEMBERSHIP OF THE COMMITTEE	iii
RECOMMENDATION	vii
CHAPTER 1	1
Reference	1
Conduct of the inquiry	1
Background	1
Overview of the bill	1
Human rights implications	2
Financial impact statement	3
Acknowledgement	3
CHAPTER 2	5
Key issues	5
The Comcare scheme	5
Commonwealth authorities exiting the Comcare scheme	6
Impact on employees	10
LABOR SENATORS ADDITIONAL COMMENTS	13
APPENDIX 1	15
Submissions received	15

RECOMMENDATION

Recommendation 1

2.30 The committee recommends that the bill be passed.

CHAPTER 1

Reference

1.1 On 26 February 2015 Mr Luke Hartsuyker, MP, Deputy Leader of the House and Assistant Minister for Employment, introduced the Safety Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015 (the bill).¹ On 19 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 8 May 2015.²

Conduct of the inquiry

1.2 Details of the inquiry were made available on the committee's website. The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from four organisations, as detailed in Appendix 1.

Background

1.3 The *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) establishes a scheme (the Comcare scheme) to provide compensation and rehabilitation support to injured Australian Government and Australian Capital Territory employees.³ Employees of private corporations who hold a licence under the SRC Act also fall under the scheme.⁴

1.4 The SRC Act establishes the Safety, Rehabilitation and Compensation Commission (the Commission) that administers the regulatory functions of the Act, other than those ascribed to Comcare which operates the scheme, and has an oversight role under the *Work Health and Safety Act 2011* (WHS Act).⁵

Overview of the bill

1.5 The bill will amend the SRC Act to provide for financial and other arrangements for a Commonwealth authority to exit the Comcare scheme.⁶ The framework established by these amendments will:

1 Mr Luke Hartsuyker MP, Assistant Minister for Employment, *House of Representatives Hansard*, 26 February 2015, p.6.

2 *Journals of the Senate*, No. 86, 19 March 2015, p. 2335.

3 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.i.

4 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.i.

5 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.i.

6 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.i.

- enable Comcare to determine and collect 'exit contributions' from former Commonwealth authorities and successors of former Commonwealth authorities. This will ensure that an exiting employer does not leave the Comcare scheme without contributing an appropriate amount to cover any current or prospective liabilities that are not funded by premiums the employer has paid before exit;
- ensure that employees injured before the employer's exit continue to be supported by an appropriate rehabilitation authority; and
- enable Comcare to determine and collect ongoing regulatory contributions from exited employers or successor bodies.⁷

1.6 The bill has two schedules. Broadly, Schedule 1 will establish the framework to enable Comcare to determine and collect 'exit contributions' from former Commonwealth authorities and their successors, and any regulatory contributions from former Commonwealth authorities.⁸

1.7 Schedule 1 also amends the SRC Act to clarify that premiums for current Commonwealth authorities and entities should be calculated with regards to the principle that current and prospective liabilities should be fully funded by Comcare-retained funds and so much of the Consolidated Revenue Fund as would be available under section 90C of the SRC Act.⁹

1.8 Schedule 2 amends provisions related to the Commission. Items 1 and 2 replace the existing representative of the Australian Capital Territory (ACT) with a second representative of the Commonwealth, nominated by the Minister for Employment.¹⁰ Item 3 provides that members are appointed to the Commission by the Minister rather than the Governor-General.¹¹

Human rights implications

1.9 The explanatory memorandum details the bill's engagement with the following human rights:

- the right to work, under Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);

7 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.i.

8 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.2.

9 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.i.

10 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.12.

11 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.12.

- the rights of persons with disabilities to rehabilitation and to work and employment, under Articles 26 and 27 of the Convention on the Rights of Persons with Disabilities (CRPD); and
- the right to social security, including social insurance under Article 9 of the ICESCR.¹²

1.10 The explanatory memorandum states that the amendments are compatible with human rights because they advance the protection of human rights.¹³

Financial impact statement

1.11 Nil.

Acknowledgement

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

12 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.iv.

13 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.v.

CHAPTER 2

Key issues

2.1 The Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015 (the bill) will provide a framework to manage the exit of a Commonwealth authority from the Comcare scheme and to ensure that liabilities are fully funded by premiums.¹ The proposed framework will also enable Comcare to determine and collect ongoing regulatory contributions from exited employers or successor bodies.²

2.2 While the bill sets out the framework that will apply when a Commonwealth authority leaves the Comcare scheme, it does not provide for the exit of any employers from the scheme.³ This would usually occur through the introduction of specific enabling legislation.⁴

2.3 The primary purpose of the bill is to ensure a Commonwealth authority does not exit the Comcare scheme without contributing appropriate ongoing costs for injured employees that remain in the scheme, and to cover liabilities.⁵

The Comcare scheme

2.4 The *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) provides rehabilitation and workers' compensation for work related injuries to the following employees:

- Commonwealth and Australian Capital Territory (ACT) public servants;
- Employees of Commonwealth and ACT statutory authorities and corporations;
- Australian Defence Force members for injuries before 1 July 2004; and
- Employees of corporations who have a license to self-insure under the SRC Act.⁶

2.5 Entities and Commonwealth authorities, also referred to as premium payers, are required to pay regulatory contributions and annual premiums as determined by Comcare under the SRC Act. Premiums and regulatory contributions primarily fund

1 Mr Luke Hartsuyker MP, Assistant Minister for Employment, *House of Representatives Hansard*, 26 February 2015, p.6.

2 Mr Luke Hartsuyker MP, Assistant Minister for Employment, *House of Representatives Hansard*, 26 February 2015, p.6.

3 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.iii.

4 Department of Employment, *Submission 2*, p.4.

5 Department of Employment, *Submission 2*, p.4.

6 Department of Employment, *Submission 2*, p.4.

the Comcare scheme.⁷ Under Section 4A of the SRC Act, the ACT government has been declared a Commonwealth authority and is a premium payer in the scheme.

2.6 The SRC Act sets out detailed provisions about responsibility for rehabilitation of injured employees and for the calculations and payment of premiums. Comcare has access to income and earnings from the premiums, plus special appropriations from the Commonwealth, and regulatory contributions from Comcare members.

2.7 The Comcare scheme's outstanding claims liabilities exceed the funds available to meet these liabilities.⁸ Comcare has been progressively restoring the funding position of the scheme since 2013-14. According to the Assistant Minister for Employment's Second Reading Speech, the bill will support current measures that Comcare has put in place to restore funds to adequate levels.⁹

2.8 In February 2015, the ACT government announced its intention to leave the Comcare scheme due to long delays in the scheme, excessive premiums and ineffective rehabilitation.¹⁰ The Electrical Trades Union of Australia's submission supports the ACT government's move to exit the Comcare scheme for these reasons.¹¹

Commonwealth authorities exiting the Comcare scheme

2.9 The bill envisages three possible scenarios where a Commonwealth authority may exit the Comcare scheme. These are when a Commonwealth authority ceases to be a Commonwealth authority but continues in existence as a body corporate no longer covered by the scheme, or when a Commonwealth authority ceases to be a Commonwealth authority but is succeeded in law by another entity.¹² The last scenario is when a Commonwealth authority, the ACT government, ceases to be a Commonwealth authority by virtue of having its declaration under section 4A of the SRC Act revoked.¹³

2.10 If any of these scenarios arise in the future, the bill will provide a framework to ensure employees will continue to be supported by a rehabilitation authority and Comcare's available scheme funds and remaining premium payers will be protected.¹⁴

7 Department of Employment, *Submission 2*, p.4.

8 Mr Luke Hartsuyker MP, Assistant Minister for Employment, *House of Representatives Hansard*, 26 February 2015, p.6.

9 Mr Luke Hartsuyker MP, Assistant Minister for Employment, *House of Representatives Hansard*, 26 February 2015, p.6.

10 Noel Towell, 'Territory ditches troubled insurer', *The Canberra Times*, 26 February 2015, accessed 29 April 2015.

11 Electrical Trades Union of Australia, *Submission 1*, p. 3.

12 Department of Employment, *Submission 2*, p.5.

13 Department of Employment, *Submission 2*, p.5.

14 Department of Employment, *Submission 2*, p.5.

The bill will ensure consistency in arrangements for meeting liabilities by applying to all future exits of Commonwealth authorities.¹⁵

2.11 There are three key obligations in the bill that may be placed on a Commonwealth authority that exits the Comcare scheme after the bill commences.¹⁶

Exit contributions

2.12 The bill will allow for Comcare to determine and collect 'exit contributions' from former Commonwealth authorities and successors of former Commonwealth authorities.¹⁷ This is to ensure that an exiting Commonwealth authority does not leave the Comcare scheme without contributing the appropriate amount to cover liabilities related to the particular Commonwealth authority that are not funded by premiums paid before their exit.¹⁸

2.13 Diagram 1.1 outlines the provisions that provide for exit contributions that mirror the existing process in the SRC Act for the determination of premiums.

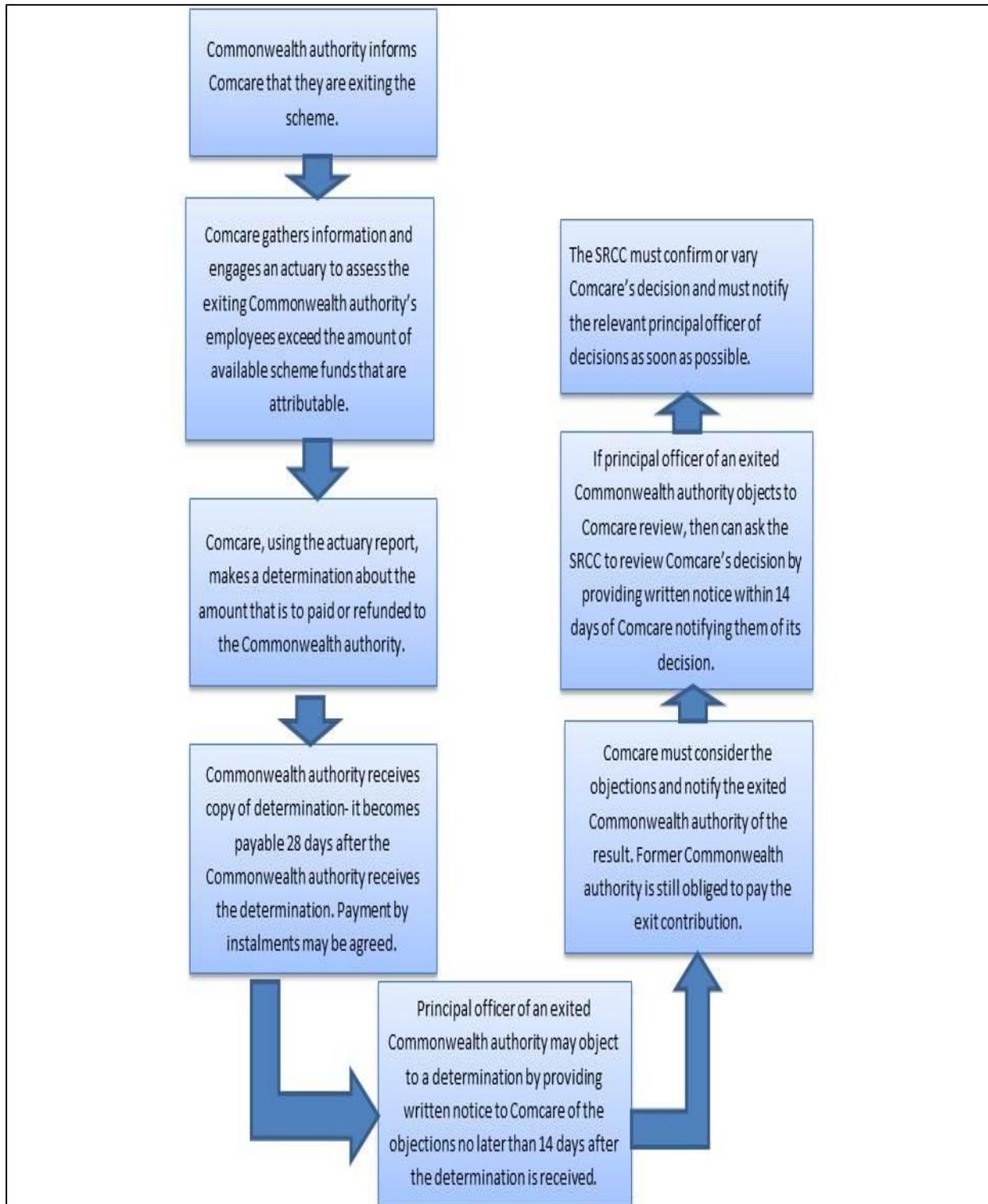
15 Department of Employment, *Submission 2*, p.5.

16 Department of Employment, *Submission 2*, p.5.

17 Department of Employment, *Submission 2*, p.6.

18 Department of Employment, *Submission 2*, p.6.

Diagram 1.1—Determination of premiums



Department of Employment, *Submission 2*, p.7.

2.14 Diagram 1.1 demonstrates multiple opportunities for a request to review Comcare's calculation of an exit contribution by an exiting Commonwealth authority. The Department of Employment (the department) envisages that after a series of consultation with the relevant exiting Commonwealth authority and expert advice from an appointed actuary, a determination would be made.¹⁹

Rehabilitation obligations

2.15 According to the department, there can be a lack of clarity for an employee about which organisation is responsible for providing rehabilitation support to an injured employee once a Commonwealth authority ceases to be covered by the scheme, either because it has been abolished or because it has transitioned to a new Commonwealth authority or entity.²⁰ This may contribute to a delay in providing rehabilitation support, and may result in poor return to work and health outcomes for injured employees.²¹

2.16 Part 3 of the SRC Act places a number of obligations on rehabilitation authorities and relevant employers to support employees in their rehabilitation.²² Relevant employers are required to take all reasonable steps to provide employees with suitable employment, and the SRC Act establishes a framework for review that allows employees to challenge decisions made by their rehabilitation authority.²³

2.17 Item 4 in Schedule 1 inserts provisions for continued rehabilitation of employees of bodies leaving the Comcare scheme. The bill will ensure that arrangements are established for the most appropriate entity to continue to perform the role of rehabilitation and relevant employer under the SRC Act where a Commonwealth authority has exited the Comcare scheme.²⁴

Regulatory contributions

2.18 The bill will enable Comcare to determine and collect ongoing regulatory contributions from exited Commonwealth authorities or successor bodies.²⁵ The department's submission outlines that while determinations may continue to be made for a number of years, the amount must reflect estimated costs incurred by Comcare, resulting in reduced costs over time as injuries are resolved and investigations are completed for that employer.²⁶

2.19 The amount of regulatory contributions to be paid by the ACT or a body corporate if either ceased to be a Commonwealth authority, must not exceed the sum

19 Department of Employment, *Submission 2*, p.6.

20 Department of Employment, *Submission 2*, p.8.

21 Department of Employment, *Submission 2*, p.8.

22 Department of Employment, *Submission 2*, p.8.

23 Department of Employment, *Submission 2*, p.8.

24 Department of Employment, *Submission 2*, p.8.

25 Department of Employment, *Submission 2*, p.8.

26 Department of Employment, *Submission 2*, p.8.

of the estimated cost incurred by the Safety, Rehabilitation and Compensation Commission (the Commission) and Comcare in carrying their respective functions under the following Acts: the SRC Act, the *Occupational Health and Safety Act 1991*, the *Work Health and Safety Act 2011* and the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011*.²⁷ For example, Comcare will incur costs in providing support to exited Commonwealth authorities who continue to support the rehabilitation of employees and may incur costs in the early years following the exit as work health and safety investigations for incidents that occurred before the exit had been finalised.²⁸

2.20 Section 97E of the SRC Act allows the Commission to issue written principles in relation to determining regulatory contributions to be paid by entities and Commonwealth authorities. Comcare must determine the estimated costs in accordance with these principles to ensure that estimated costs are referable to the body corporate or the ACT.²⁹ An effected Commonwealth authority would be able to seek a review of a regulatory contribution in the same manner that a review of an exit contribution would occur (see diagram 1.1).³⁰

Impact on employees

2.21 The committee notes concerns raised about the effect the bill may have on workers and their entitlements. The Australian Council of Trade Unions (ACTU) noted in their submission that as the ACT government has yet to finalise the details of their proposed replacement scheme, it is unclear whether workers would be better off under the Comcare scheme or replacement scheme.³¹

2.22 The committee notes the ACTU's views but stresses that it is not the intention of the bill to look at the ACT government's proposed replacement scheme.

2.23 The Victorian Government supports those provisions that will ensure injured employees will continue to receive rehabilitation from employers exiting the scheme:

The Victorian Government welcomes the provisions in the Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015 in so far as it ensures that Comcare is able to set sustainable premiums, and that injured employees of existing premium payer entities will continue to receive appropriate rehabilitation treatment facilitating their early return to work.³²

2.24 The bill does not provide for the exit of any particular employers from the Comcare scheme, as this would occur through specific legislation. The bill therefore

27 Department of Employment, *Submission 2*, p.8.

28 Department of Employment, *Submission 2*, p.8.

29 Department of Employment, *Submission 2*, p.8.

30 Department of Employment, *Submission 2*, p.8.

31 Australian Council of Trade Unions, *Submission 4*, p.3.

32 Victorian Government, *Submission 3*, p.1.

does not affect any employee's existing entitlement to compensation, other than to provide for rehabilitation obligations and arrangements to continue.³³

2.25 As outlined in the department's submission, any employee who is injured before an exit, will remain entitled to compensation and rehabilitation under the SRC Act, with the employee's entitlement to compensation not being affected in any way.³⁴

2.26 The bill will provide for the preservation of rehabilitation arrangements to ensure that there is continuity for injured employees and that they continue to be supported by their employer or another appropriate body.³⁵

Committee view

2.27 The committee notes that maintaining the financial sustainability of the Comcare scheme through appropriate exit contributions for ongoing claims management and liabilities is integral to ensuring the long-term sustainability of the scheme to pay claims and support injured employees.

2.28 The committee notes concern on the potential impact on employees. The committee is satisfied that the bill will not change any existing benefits or entitlements for injured workers. It will ensure that employees injured before a Commonwealth authority exits the Comcare scheme will continue to receive compensation and rehabilitation under the SRC Act.

2.29 The committee is persuaded that the bill will ensure stability for workers, employers and the Comcare scheme when a Commonwealth authority exits the scheme.

33 Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015, *Explanatory Memorandum*, p.iii.

34 Department of Employment, *Submission 2*, p.9.

35 Department of Employment, *Submission 2*, p.9.

Recommendation 1

2.30 The committee recommends that the bill be passed.

**Senator Bridget McKenzie
Chair**

LABOR SENATORS ADDITIONAL COMMENTS

1.1 Labor Senators of the Senate Education and Employment Committee (committee) raise concerns on the *Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015* (the bill).

1.2 Whilst Labor Senators support legislation to ensure that an exiting employer does not leave the Comcare scheme without contributing an appropriate amount to cover any current or prospective liabilities that are not funded by premiums the employer has paid before exit, we must also ensure that no workers will be worse off under the bill, and that the passage of this bill will not provide an incentive for employers to disadvantage workers.

1.3 We note that the reason for referring this bill to the committee was to ensure a thorough investigation of the bill, and allow sufficient time to consider the bill. However, since the bill was referred to the committee the government introduced a third substantive bill relating to Comcare, the *Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015*. Given the introduction of said bill, we do not believe that the circumstances of the inquiry into the bill now meet these criteria, and the opportunity for more thorough investigation of the interaction of the bill with other bills relating to Comcare hasn't been afforded to the committee.

1.4 The ACT government is in the process of consulting about the workings of any new scheme. It does not yet have a designed scheme and it will not for some time. Therefore, the expedition of the government's bill is unnecessary.

1.5 Labor Senators were not convinced by the Department of Employment's submission that the passage of the bill would not result in a reduced premium pool in state workers' compensation systems, concerns raised by the ETU and the Victorian Government.¹

1.6 As such, Labor Senators urge the government to request the ACT government provides written assurances to ensure workers will not be worse off.

Senator Sue Lines
Deputy Chair

¹ Electrical Trades Union of Australia, *Submission 1*, p.6; Victorian Government, *Submission 3*, p.2.

APPENDIX 1

Submissions received

Submissions

1. Electrical Trades Union of Australia
2. Department of Employment
3. Victorian Government
4. Australian Council of Trade Unions