

# CHAPTER 1

## Reference

1.1 On 19 March 2014 the Hon. Christopher Pyne MP introduced the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (bill) in the House of Representatives.<sup>1</sup> On 15 May 2014 the Senate referred the provisions of the bill to the Senate Education and Employment Legislation Committee (committee) for inquiry and report by 8 July 2014.<sup>2</sup>

## Conduct of inquiry

1.2 Details of the inquiry were made available on the committee's website.<sup>3</sup> The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 18 organisations, as detailed in Appendix 1.

1.3 A public hearing was held in Canberra on 20 June 2014. The witness list for the hearing is available in Appendix 2.

## Background

1.4 The Productivity Commission's 2004 *Inquiry into National Workers' Compensation and Occupational Health and Safety Frameworks* recommended that a national workers' compensation scheme be developed to operate in parallel to existing state and territory schemes. Specifically, it suggested the following steps be taken:

step 1 – immediately encourage self-insurance applications from employers who meet the current competition test to self-insure under the Comcare scheme, subject to meeting its prudential, claims management, occupational, health and safety and other requirements; step 2 – commence, at the same time, the development of an alternative self-insurance scheme for corporate employers who wish to join such a scheme, and who meet prudential, claims management and other requirements.<sup>4</sup>

1.5 In 2007 the previous government placed a moratorium on new applications for declarations of eligibility from private sector corporations seeking self-insurance under the Comcare scheme.<sup>5</sup>

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1 *Votes and Proceedings*, 19 March 2014, p. 389.

2 *Journals of the Senate*, 15 May 2014, p. 819.

3 [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/Safety\\_Rehabilitation\\_and\\_Compensation\\_Legislation\\_Amendment\\_Bill\\_2014](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Safety_Rehabilitation_and_Compensation_Legislation_Amendment_Bill_2014) (accessed 6 June 2014).

4 Productivity Commission Inquiry Report No 27, March 2004, *National Workers' Compensation and Occupational Health and Safety Frameworks*, pp XL– XLI.

5 Licensing and other immediate amendments under the *Safety, Rehabilitation and Compensation Act 1988*, Regulation Impact Statement, Department of Employment, February 2014, p. v.

1.6 With respect to group employer licences, the Department of Education, Employment and Workplace Relations 2008 *Review of Self-insurance arrangements under the Comcare scheme* recommended that:

...[t]he Safety, Rehabilitation and Compensation Act be amended so that... corporations forming part of a group of related corporations are able to be assessed as a group...; and the Safety, Rehabilitation and Compensation Act be amended to enable the Safety Rehabilitation and Compensation Commission to grant a group licence to a related eligible corporation.<sup>6</sup>

1.7 Most recently, the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) *Review* by Dr Allan Hawke AC, commissioned by the former government in 2012 (*Hawke Review*), recommended that the 'moratorium and competition test should be lifted, allowing national employers to join the Comcare scheme.'<sup>7</sup> Further, it recommended that:

...[t]he SRC Act should be amended to allow the Commission to grant group licences to companies of licenced self-insurers with more than one entity, subject to satisfying all prudential requirements, in order to reduce administrative costs for scheme participation....<sup>8</sup>

The *Hawke Review* concluded that removing the competition test would:

...[a]ssist in reducing red tape, while broadening the Comcare scheme to allow a national approach for employers who satisfy the associated set of criteria and would build on the national disability strategy and approach.<sup>9</sup>

1.8 On 2 December 2013 the current government lifted the moratorium.<sup>10</sup>

1.9 The bill seeks to implement the recommendations of the *Hawke Review*,<sup>11</sup> and implement government commitments with respect to building a stronger and more

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6 Australian Government, Department of Education, Employment and Workplace Relations, *Report of the Review of Self-insurance arrangements under the Comcare Scheme*, January 2009, p. 7. On 18 September 2013 the Department of Education and the Department of Employment was created out of the former Department of Education, Employment and Workplace Relations.

7 Australian Government, Department of Employment, Allan Hawke AC, *Safety Rehabilitation and Compensation Act Review: Report of the Comcare Scheme's Performance, Governance and Financial Framework*, 7 December 2012, p. 3.

8 Australian Government, Department of Employment, Allan Hawke AC, *Safety Rehabilitation and Compensation Act Review: Report of the Comcare Scheme's Performance, Governance and Financial Framework*, 7 December 2012, p. 3.

9 Australian Government, Department of Employment, Allan Hawke AC, *Safety Rehabilitation and Compensation Act Review: Report of the Comcare Scheme's Performance, Governance and Financial Framework*, 7 December 2012, p. 34.

10 Licensing and other immediate amendments under the *Safety, Rehabilitation and Compensation Act 1988*, Regulation Impact Statement, Department of Employment, February 2014, p. v.

11 Explanatory Memorandum, *Safety Rehabilitation and Compensation Bill 2014*, p. i.

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prosperous economy. Specifically, it seeks to reduce the regulatory impact on the economy by \$32.8 million each year for the next 10 years.<sup>12</sup>

1.10 The bill also proposes to respond to community expectations concerning personal accountability.<sup>13</sup>

### **Overview of the bill**

1.11 The bill proposes to amend the SRC Act and the *Work Health Safety Act 2011* (WHS Act). The proposed amendments would:

- remove the requirement for the Minister for Employment (Minister) to declare a corporation to be eligible to be granted a licence for self-insurance, while retaining the ability for the Minister to give direction to the Safety, Rehabilitation and Compensation Commission (Commission);
- enable corporations currently required to meet workers' compensation obligations under two or more workers' compensation laws of a state or territory to apply to the Commission for approval to be a self-insurer in the Comcare scheme;
- allow a former Commonwealth authority to apply directly to the Commission for approval to be a self-insurer in the Comcare scheme and be granted a group licence if the authority meets the 'national employer' test;
- enable the Commission to grant 'group employer licenses' to related corporations;
- make consequential changes to extend the coverage provisions of the WHS Act to those corporations that obtain a licence to self-insure under the SRC Act; and
- exclude access to workers' compensation where: (i) a person engages in serious and wilful misconduct even if the injury results in death or serious and permanent impairment; or (ii) injuries occur during recess breaks away from an employer's premises; or (iii) injuries are sustained because a person voluntarily and unreasonably submitted to an abnormal risk of injury.<sup>14</sup>

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12 Explanatory Memorandum, *Safety Rehabilitation and Compensation Bill 2014*, p. i.

13 Licensing and other immediate amendments under the *Safety, Rehabilitation and Compensation Act 1988*, Regulation Impact Statement, Department of Employment, February 2014, p. 45.

14 Explanatory Memorandum, *Safety Rehabilitation and Compensation Bill 2014*, pp i–ii.

## Structure of the bill

1.12 The bill is comprised of five schedules.

Schedule 1	national employers
Schedule 2	group employer licences
Schedule 3	injury caused by misconduct
Schedule 4	recess in employment abnormal risk of injury
Schedule 5	technical provisions

### *Schedule 1: national employers*

1.13 Schedule 1 proposes to introduce a 'national employer' test for licence eligibility and remove the requirement for the Minister to make a declaration before a licence application can be made. The 'national employer' test replaces the current requirement that in order to obtain a licence under the SRC Act a corporation must be carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority. The 'national employer' test proposes that a corporation that has employer obligations in two or more Australian jurisdictions would classify as a national employer, and therefore, assuming it satisfies the other requirements of the SRC Act, could obtain a licence under the SRC Act, bringing all of its employees under a single workers' compensation jurisdiction.<sup>15</sup>

1.14 Schedule 1 also sets out terms to ensure that employers who are granted a licence under the SRC Act are covered by the WHS Act.<sup>16</sup>

### *Schedule 2: group employer licences*

1.15 Instead of requiring each corporation to apply for an individual licence, schedule 2 proposes to introduce a licensing scheme whereby one 'group employer licence' can be issued to a group of corporations which are related bodies corporate.<sup>17</sup>

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15 Licensing and other immediate amendments under the *Safety, Rehabilitation and Compensation Act 1988*, Regulation Impact Statement, Department of Employment, February 2014, pp 1–7.

16 Licensing and other immediate amendments under the *Safety, Rehabilitation and Compensation Act 1988*, Regulation Impact Statement, Department of Employment, February 2014, pp 1–7.

17 Licensing and other immediate amendments under the *Safety, Rehabilitation and Compensation Act 1988*, Regulation Impact Statement, Department of Employment, February 2014, pp 8–43.

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**Schedule 3: injury caused by misconduct**

1.16 Schedule 3 proposes to remove eligibility for workers' compensation where an injury results in death or serious and permanent impairment that is caused by the serious and wilful misconduct of the employee.<sup>18</sup>

**Schedule 4: recess in employment**

1.17 Schedule 4 proposes to remove eligibility for workers' compensation where an injury is sustained by the employee while the employee was not at their place of work during a recess break.<sup>19</sup>

1.18 Schedule 4 also proposes to remove eligibility for workers' compensation where an injury is sustained by the employee because he or she voluntarily and unreasonably submitted to an abnormal risk of injury.<sup>20</sup>

**Schedule 5: technical provisions**

1.19 Schedule 5 proposes to make technical amendments only.<sup>21</sup>

**Human rights implications**

1.20 The explanatory memorandum details the bill's engagement of numerous human rights instruments:

- the right to social security, including social insurance, under Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESR);
- the right to safe and healthy working conditions, under Article 7 of ICESR;
- the right to privacy, under Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR);
- the right to work, under Article 6 of ICESR, in particular the rights of persons with disabilities to habilitation and rehabilitation and to work and employment, under Articles 26 and 27 of the *Convention on the Rights of Persons with Disabilities* (CRDP), respectively.<sup>22</sup>

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18 Licensing and other immediate amendments under the *Safety, Rehabilitation and Compensation Act 1988*, Regulation Impact Statement, Department of Employment, February 2014, p. 44.

19 Licensing and other immediate amendments under the *Safety, Rehabilitation and Compensation Act 1988*, Regulation Impact Statement, Department of Employment, February 2014, pp 45–46.

20 Licensing and other immediate amendments under the *Safety, Rehabilitation and Compensation Act 1988*, Regulation Impact Statement, Department of Employment, February 2014, pp 45–46; *Safety Rehabilitation and Compensation Act 1968*, s. 6(3).

21 Licensing and other immediate amendments under the *Safety, Rehabilitation and Compensation Act 1988*, Regulation Impact Statement, Department of Employment, February 2014, p. 47.

22 Explanatory Memorandum, *Safety Rehabilitation and Compensation Bill 2014*, at Statement of Compatibility, p. ii.

1.21 The explanatory memorandum states that the bill is compatible with human rights because it advances the protection of human rights. Further it argues:

To the extent that the amendments may limit human rights, those limitations are reasonable, necessary and proportionate.<sup>23</sup>

### **Financial Impact Statement**

1.22 The Department of Employment has not provided a Financial Impact Statement.

### **Acknowledgement**

1.23 The committee thanks those individuals and organisations who contributed to the inquiry by preparing written submissions and giving evidence at the hearing.

### **Notes on references**

1.24 References in this report to the Hansard for the public hearing are to the Proof Hansard. Please note that page numbers may vary between the Proof Hansard and the official transcripts.

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23 Explanatory Memorandum, *Safety Rehabilitation and Compensation Bill 2014*, at Statement of Compatibility, p. vi.