CHAPTER 2

Key Issues

2.1 The bill received a mixed response from submitters and witnesses.

2.2 All submitters were generally supportive of the establishment of nationally consistent workers' compensation standards. Some submitters voiced concerns that the Comcare scheme was not equipped to manage the occupational work health and safety risks of an increased workload,[1] and that the bill would reduce the rights and entitlements of Australian workers.[2]

2.3 Broadly speaking, concerns brought to the committee's attention centred on eligibility to the Comcare scheme and exclusions of access to workers' compensation.

2.4 In this chapter the committee addresses stakeholder concerns and outlines its views.

Eligibility to the Comcare scheme

2.5 The amendments under schedules 1 and 2 of the bill would operate to expand the Comcare scheme and provide greater consistency with respect to workers' compensation across Australia.

2.6 The amendments under schedule 1 would amend the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) to remove the 'competition test' and introduce a 'national employer' test for licence eligibility.[3] Under the current 'competition test' eligibility to join the Comcare scheme is confined to Commonwealth authorities, privatised Commonwealth authorities and corporations in competition with either.[4] Under the proposed 'national employer' test a corporation that has employer obligations in two or more Australian jurisdictions, 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.[5]

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1 Community and Public Sector Union, *Submission 5*, p. 8; CFMEU Mining and Energy, *Submission 2*, p. 1; Australian Lawyers Alliance, *Submission 15*, p. 7.

2 CFEMU Mining and Energy, *Submission 2*; Australian Manufacturing Workers' Union, *Submission 4*; Community Public Sector Union, *Submission 5*; Slater & Gordon Lawyers, *Submission 8*; Australian Council of Trade Unions, *Submission 13*; Law Council of Australia, *Submission* 14; Australian Lawyers Alliance, *Submission 15*.

3 Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, ss. 4(1).

4 Slater & Gordon Lawyers, *Submission 8*, p. 4.

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

2.7 The amendments under schedule 2 would amend the SRC Act to allow 'group employer licences' to be granted where at least one corporation in a group of corporations is a 'national employer.'[6] The introduction of 'group employer licences' will reduce red tape and costs for Australian corporations and 'recognises that groups of interrelated corporations often share return-to-work and work health and safety systems within the group.'[7]

The expansion of the Comcare scheme

2.8 Some submitters objected to schedules 1 and 2 of the bill, submitting that harmonisation of the state and territory schemes is a better approach to a national scheme, as opposed to the expansion of the Comcare scheme.[8]

2.9 Many submitters expressed serious concerns about the potential expansion of the Comcare scheme as a result of the 'national employer' test.[9] Some submitters raised reservations about the definition of 'national employer' not setting a minimum number of employees required in an Australian jurisdiction for self-insurer eligibility purposes.[10] The Australian Council of Trade Unions (ACTU) also argued that: '[g]roup licences are of particular concern as small employers, are, in general, not particularly equipped to administer a self-insurance scheme.'[11]

2.10 Other submitters registered strong support for the introduction of the 'national employer' test.[12] The National Electrical and Communications Association (NECA) submitted that:

> the requirements of various jurisdictions not only significantly cost businesses many additional thousands of dollars when compared with a single national scheme, but additionally that multi state jurisdiction led to serious inequities for employee compensation within the same organisation across different state legislations.[13]

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6 Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, ss. 4(1).

7 The Hon. Christopher Pyne, MP, Minister for Education, *House of Representatives Hansard*, 19 March 2014, p. 2381.

8 Slater & Gordon Lawyers, *Submission 8*, p. 5; Law Council of Australia, *Submission 14*.

9 Queensland Council of Unions, *Submission* 1, pp 3–4; Australian Manufacturing Workers' Union, *Submission 4*, p. 4; Community and Public Sector Union, *Submission 5*, pp 7–8; Shop, Distributive and Allied Employees' Association, *Submission 7*, p. 4; Slater & Gordon Lawyers, *Submission 8*, pp 5–8; Australian Council of Trade Unions, *Submission 13*, pp 8–10; Law Council of Australia, *Submission 14*, p. 3; Australian Lawyers Alliance, *Submission 15*, pp 6–7.

10 Australian Council of Trade Unions, *Submission 13*, p. 9; Slater & Gordon Lawyers, *Submission 8*, p. 5.

11 Australian Council of Trade Unions, *Submission 13*, p. 9.

12 Australian Chamber of Commerce and Industry, *Submission 10*, p. 1; National Electrical and Communications Association, *Submission 9*, p. 3.

13 National Electrical and Communications Association, *Submission 9*, p. 3.

2.11 The Department of Education's (department) rationale for opening up the Comcare scheme is to reduce compliance costs around processes.

> If you are a national employer, the Productivity Commission said that it would cost you millions of dollars if you are trying to comply with six different workers compensation schemes. The administrative costs of that were very expensive. So it reduces costs but it is also about efficiency.[14]

2.12 Similarly, the Australian Chamber of Commerce and Industry (ACCI) emphasised how the proposed 'national employer' test would provide employers operating in multiple states the opportunity to adopt a national approach to the management of workers' compensation in their businesses.[15] Comcare argued that 'national companies outside the Comcare scheme have to navigate the complexity of fragmented state and territory regulatory and insurance systems,' whereas workers under the Comcare scheme 'have common coverage and entitlements regardless of where they live or work within Australia.'[16]

> **[**A]t the moment a worker can get injured in one state and get different compensation, yet a worker with exactly the same injury in another state will get a different arrangement. So at the moment a worker can get different benefits, different step-downs, but still have exactly the same injury. So there is some inequity in that.[17]

Impact on state and territory workers' compensation schemes

2.13 Although generally supportive of a nationally consistent workers' compensation scheme, a number of submitters brought to the committee's attention concerns about the ramifications of the expansion of Comcare on state and territory workers' compensation schemes.[18]

2.14 Some submitters commented on the need for actuarial analysis to be undertaken of the impact of the bill on the premium pool.[19] Specifically, the Queensland government took the view that until detail on the scope of the proposed 'national employer' test is provided, meaningful actuarial analysis on the bill could not be undertaken.[20] The Regulation Impact Statement (RIS) notes that actuarial assessments were conducted for the Australian government Productivity

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14 Ms Sandra Parker, Deputy Secretary, Department of Employment, *Estimates transcript of evidence*, 3 June 2014, p. 118.

15 Australian Chamber of Commerce and Industry, *Submission 10*, p. 1.

16 Comcare, *Submission 11*, p. 3.

17 Ms Sandra Parker, Deputy Secretary, Department of Employment, *Estimates transcript of evidence*, 3 June 2014, p. 118.

18 Australian Council of Trade Unions, *Submission 13*; Law Council of Australia, *Submission 14*.

19 Queensland Council of Unions, *Submission 1*; Law Council of Australia, *Submission 14*; Queensland Government, *Submission 17*.

20 Queensland Government, *Submission 17*, p. 11.

Commission's 2004 *Inquiry into National Workers' Compensation and Occupational Health and Safety Frameworks* and that minimal impact would be felt by state based schemes or remaining employers due to the exit of corporations from the state and territory schemes to the Comcare scheme.[21]

2.15 The Australian Manufacturing Workers' Union (AMWU) submitted that the proposed 'group employer licence' is open to far more employers than comparable state group licensees because of fewer financial requirements and the absence of any minimum number of employees.[22] The Community and Public Sector Union (CPSU) argued that by allowing entry to the Comcare scheme through group licences, small employers who do not meet the 'national employer' test could opt out of contributing to the relevant premium pool of workers' compensation.[23] The Law Council of Australia submitted that:

> A major concern is that the expansion of the SRC scheme will have ramifications for the financial viability of existing [s]tates and [t]erritory workers' compensation scheme… [t]he preferred approach is to adopt best practices from each jurisdiction in developing harmonising legislation, rather than simply enabling national employers to opt-out of state/territory schemes.[24]

2.16 The Queensland Council of Unions also expressed concerns that the departure of national employers from state or territory workers' compensation schemes would result in a weakening of the state scheme and potentially 'massive increases for state-based employers/and or the eventual removal of entitlements to injured workers to attempt to maintain the scheme viability.'[25]

2.17 The department submitted that the 2008 *Taylor Fry Review* of self-insurance arrangements under the Comcare scheme concluded that there would be minimal impacts on state workers' compensation schemes if private corporations were to join the Comcare scheme as self-insurers.[26] Specifically, the *Taylor Fry Review* concluded that:

> The prudential and financial requirements of licensees mean that the risk to premium payers or the Commonwealth is minimal… All the available evidence suggests that the actual impacts on the state and territory workers' compensation scheme of corporations exiting those schemes to join

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

22 Australian Manufacturing Workers' Union, *Submission 4*, p. 5.

23 Community and Public Sector Union, *Submission 5*, p. 7.

24 Law Council of Australia, *Submission 14*, p. 3.

25 Queensland Council of Unions, *Submission 2*, p. 2.

26 Department of Education, Employment and Workplace Relations, Taylor Fry, *Review of self-insurance arrangements under the Comcare scheme*, 15 May 2008, p. 80.

> Comcare have been insignificant. The likelihood of future impacts being significant is low.[27]

2.18 Some submitters were concerned that the Comcare scheme offers fewer benefits than many state and territory workers' compensations schemes[28] and has inadequate dispute resolution processes.[29] The department advised that:

> The Commonwealth Work Health and Safety framework consisting of the Work Health and Safety Act, Regulations and Codes of Practice is based on the provisions of the Model Work Health and Safety Act and Regulations developed by all states and territory jurisdictions and peak union and employer organisations through Safe Work Australia.[30]

The capacity of Comcare

2.19 Some submitters argued Comcare lacked the capacity to monitor performance, regulate and hold to account self-insurers on a national basis, for example, where a self-insurer fails to meet return to work obligations.[31] In response, Comcare explained that on its assessment of applications for self-insurance licences, the Commission applies stringent standards and regularly monitors licensees' performance, with regard to such issues as:

> (a) the resources of the corporation applying for the licence…; (b) financial and prudential information…; (c) the claims management systems information of the corporation…; and (d) the past performance of the applicant corporation in complying with and conforming to applicable laws or statutory guidelines in relation to the health and safety of employees, rehabilitation of employees, premium payment and claims management obligations.[32]

2.20 In addition, the Department of Education, Employment and Workplace Relations 2009 *Comcare Review* found that:

> Overall, the Comcare scheme's approach to Work Health and Safety regulation was comparable with other Australian schemes. The provision of self-insurance licences to private sector corporations was not seen as placing them or their employees at a disadvantage.[33]

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27 Department of Education, Employment and Workplace Relations, Taylor Fry, *Review of self-insurance arrangements under the Comcare scheme,* 15 May 2008, p. 81.

28 Community and Public Sector Union, *Submission 5*, p. 8.

29 Finance Sector Union, *Submission 3*, p. 4.

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

31 Australian Lawyers Alliance, *Submission 15*, p. 7.

32 Department of Employment, *Submission 6*, p. 7.

33 Comcare, *Submission 11*, p. 4.

2.21 A number of submissions argued that the Comcare scheme was not equipped to cover workers in industries outside of the Australian Public Service, for example, aged care, manufacturing or mining.[34] The department responded to this criticism by explaining that:

> The industry profile of the Comcare scheme is varied and covers the Australian Defence Force as well as 29 self-insurers who are private corporations across a range of industries including: construction; manufacturing; Financial and insurance services; Transport, postal and warehousing; and Information media and telecommunications.[35]

2.22 Further, Comcare explained that while aged care, the health industry and mining sectors are not currently in the Comcare jurisdiction, '[s]kills in this area will be acquired when/if companies in these fields enter the Comcare scheme.'[36]

Committee view

2.23 The committee notes that all submitters were generally supportive of the establishment of nationally consistent workers' compensation standards.

2.24 The committee recognises the submitter concerns outlined above. However, the committee notes that the proposed measures were carefully drafted after consultation and in response to a number of comprehensive reviews and inquiries.

2.25 While the committee recognises that Comcare will need to adjust and increase its workforce accordingly, it maintains that legislative change is still necessary to significantly reduce compliance costs, simplify processes and boost productivity and efficiency for businesses that operate and employ across multiple jurisdictions.

2.26 As the amendments implement the specific recommendations of a number of reviews and inquiries to remove the 'national employer test' and enable the Commission to grant 'group employer licenses', the committee can see no reason for the legislation to be delayed.

Exclusions of access to workers' compensation

2.27 The second key issue concerns exclusions of access to workers' compensation in three instances. The RIS identified that the exclusions of access to workers' compensation outlined in the bill respond to community expectations concerning personal accountability.[37] The government said that: '[i]n circumstances where a

34 Community and Public Sector Union, *Submission 5*, p. 8; CFMEU Mining and Energy, *Submission 2*, p. 1.

35 Department of Employment, *Submission 6*, p. 11.

36 Comcare, answer to questions on notice, 20 June 2014 (received 17 June 2014).

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

claimant's injury is the result of their own serious and wilful misconduct, community expectations are that the injury would not be compensable.'[38]

2.28 Some submitters expressed concerns that these exclusions would result in injured workers receiving less workers' compensation payments than they would under their respective state or territory system.[39] Some witnesses also questioned the extent to which these provisions could apply to industries outside the Comcare scheme's current profile.[40]

Injury caused by misconduct

2.29 The amendment under schedule 3 would alter subsection 14(3) of the SRC Act by excluding access to workers' compensation where an employee sustains an injury that is caused by their own serious and wilful misconduct, even if the injury results in death or serious and permanent injury.[41] Specifically, this amendment is:

> geared towards people acting in a proper and safe manner and [does] not include a safety net for people who break the rules and put at risk not just themselves but other employees.[42]

2.30 It should be noted that the proposed amendment provides an exception in subsection 147(2) of the SRC Act for Australian Defence Force (ADF) members, such that they will continue to have access to workers' compensation where their own serious and wilful misconduct results in death or serious and permanent injury.[43]

2.31 A number of submissions pointed out that currently all Australian workers' compensation jurisdictions provide coverage where the employee sustains an injury that results in death or serious or permanent injury, even where the injury is thought to be caused by their own serious and wilful misconduct, providing the injury was not intentionally self-inflicted.[44]

2.32 Submitters and witnesses representing employees' rights disagreed with the proposed exclusion of access to workers compensation where an employee sustains an

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

39 Australian Manufacturing Workers' Union, *Submission 4*; Community Public Sector Union, *Submission 5*; Australian Council of Trade Unions, *Submission 13*; Law Council of Australia, *Submission 14*; Australian Lawyers Alliance, *Submission 15*.

40 CFEMU Mining and Energy, *Submission 2*; Slater & Gordon Lawyers, *Submission 8*; Australian Federal Police Association, *Submission 12.*

41 Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, ss. 14(3).

42 The Hon. Christopher Pyne, MP, Minister for Education, *House of Representatives Hansard*, 19 March 2014, p. 2381.

43 Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, ss. 147(2).

44 CFEMU Mining and Energy, *Submission 2*, p. 3; Slater & Gordon Lawyers, *Submission 8*, p. 5; Law Council of Australia, *Submission 14*, p. 4; Unions NSW, *Submission 16*, p. 8.

injury that is caused by their own serious and wilful misconduct, even if the injury results in death or serious and permanent injury.[45] They expressed concerns about its procedural fairness[46] and argued that it would shift the burdens and risks associated with employment further on to employees.[47] In evidence to the committee, Mr Trevor Clarke, Senior Industrial Officer of ACTU questioned 'how a deceased worker might meet the evidentiary burden of proving that the conduct that killed them was not wilful.'[48] The department's response to this concern is as follows:

> If an employee were to die at work, I do not think the employer could simply assert that it was caused by the employee's serious and wilful misconduct. Ordinarily, the dependents of the deceased person would stand to benefit from a claim under the employer's liability. It would only be if the employer could counter that claim by proving there had been serious and wilful misconduct that the deceased employee's dependents would miss out.
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> …
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> [t]he employer would have to adduce evidence of the serious and wilful misconduct. There would have to be visual, documentary or eyewitness evidence to say that the person was engaged in an activity that constituted serious and wilful misconduct …[49]

2.33 The Australian Federal Police Association (AFPA) argued that policing work exposes police employees to a significantly high risk, and that they should therefore be afforded the same protections provided to ADF members under the proposed subsection 147(2), such that they would continue to have access to compensation in cases where serious and wilful misconduct results in death or serious and permanent impairment.[50]

2.34 The department explained that the bill aims to respond to community expectations concerning personal accountability.[51] Further, in the 2014-2015 Budget Estimates public hearings, the Hon. Eric Abetz, Minister for Employment stated:

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45 Law Council of Australia, *Submission 14*, p. 5; Unions NSW, *Submission 16*, pp 4–5.

46 CFEMU Mining and Energy, *Submission 2*, p. 3; Finance Sector Union of Australia, *Submission 3*, p. 7; Australian Manufacturing Workers' Union, *Submission 4*, p. 6; Community Public Sector Union, *Submission 5*, p. 6; Slater & Gordon Lawyers, *Submission 8*, p. 5; Australian Council of Trade Unions, *Submission 13*, pp 13–14; Law Council of Australia, *Submission 14*, p. 5; Australian Lawyers Alliance, *Submission 15*, pp 8–9.

47 Australian Council of Trade Unions, *Submission 13*, p. 12.

48 Mr Trevor Clarke, Australian Council of Trade Unions, *Committee Hansard*, 20 June 2014, pp 24–25.

49 Ms Renee Leon, PSM, Secretary, Department of Employment, *Estimates transcript of evidence*, 3 June 2014, p. 25.

50 Australian Federal Police Association, *Submission 12*, p. 4.

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

> From a government policy point of view, people do need to take responsibility for their own actions, and wilful and serious misconduct does have consequences that will have flow-on impacts… every extra claim on a workers compensation policy increases premiums, increases the cost of employing people and, as a result, mitigates against employment opportunities in this country.[52]

2.35 Mr Greg Pattison, Special Advisor Workplace Health, Safety and Compensation Policy, ACCI, supported the proposed exclusion under schedule 3. In explaining ACCI's position, Mr Pattison articulated how the current provision affected employers:

> It is one of the ongoing frustrations of employers generally that they feel they are being held accountable, liable – and in this case liable through the increase in their workers compensation costs – for the actions of employees after they have done all the right things: after they have trained them, provided them with instruction, direction, all those sorts of things, yet it still comes back on the employer. In their minds, it still comes back on them, because they have to pay additional premium as a consequence.[53]

Recess in employment

2.36 The Productivity Commission's 2004 *Inquiry into National Workers' Compensation and Occupational Health and Safety Frameworks* (2004 Productivity Commission Inquiry) recommended that: 'coverage for recess breaks and work-related events… be restricted, on the basis of lack of employer control, to those at workplaces and at employer sanctioned events.'[54]

2.37 The amendment under schedule 4 proposes to remove entitlement to workers' compensation for injuries sustained when an employee is temporarily absent from the workplace during a recess.[55]

> The rationale is that employers undertake to keep their workplace safe for employees. That is the responsibility and duty of an employer. The workers compensation scheme is there so, if, despite the employer's best efforts, an injury occurs at work, the worker is nevertheless covered. But the employer does not have any control over the places an employee might go to when they leave the employer's place of work.[56]

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52 The Hon. Eric Abetz, Minister for Employment, *Estimates transcript of evidence*, 3 June 2014, p. 116.

53 Mr Greg Pattison, Special Advisor Workplace Health, Safety and Compensation Policy, ACCI, *Committee Hansard*, 3 June 2014, p. 11.

54 Productivity Commission Inquiry Report No 27, March 2004, *National Workers' Compensation and Occupational Health and Safety Frameworks*, p. 187.

55 Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, para. 6(1)(b).

56 Ms Renee Leon, PSM, Secretary, Department of Employment, *Estimates transcript of evidence*, 3 June 2014, p. 117.

2.38 The committee heard extensive evidence relating to the possible implications of this proposed amendment on workers. Issues were raised concerning situations where employees must travel between worksites during a recess, or where it is necessary for employees to leave work to obtain food or drink.[57] Specifically, some submitters argued that the proposed amendment failed to accommodate the obligations of police and emergency service workers.[58]

2.39 AFPA presented evidence at the hearing that during meal breaks Federal Police are considered to be on duty.

> With the recess breaks, or meal breaks, in the Federal Police you are actually paid during your meal breaks because you are actually still on duty. So you have a difficult situation there.
>
> I was going to ask you that question, actually, Mr Hunt-Sharman. That is, you really are not off duty, are you?
>
> No.
>
> So if you did go to a cafe across the road and somebody was holding the cafe up at the time you went in—or attempted to, stupidly, while you were there—you actually are on duty, aren't you?
>
> That is correct.
>
> I can well understand the issue with others who have come before us, but on the common sense principle I could never see an occasion in which somebody in your activity could ever actually have the charge laid against you, because you are on duty all the time.
>
> Yes, and of course you are there to protect life and property. That is your sworn oath as an officer of the Crown.[59]

2.40 Similarly, at the hearing Mr Wayne McAndrew, General Vice President of CFMEU Mining and Energy, explained that in the mining industry recess breaks are also considered part of work:

> [r]ecesses, or meal breaks as we more commonly call them in my industry, are covered as part of the work in any event. You are not off for a period of time; it is pretty hard to come out for a cup of coffee from three miles underground, for example. So it has always been part of their work, whether they worked seven, eight, nine or 12 hours.[60]

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57 CFMEU Mining and Energy, *Submission 2*, p. 3; Financial Sector Union of Australia, *Submission 3*, p. 6.

58 Slater & Gordon Lawyers, *Submission* 8; Australian Federal Police Association, *Submission* 12; Australian Lawyers Alliance, *Submission 15*.

59 Mr Jon Hunt-Sharman, Australian Federal Police Association, *Committee Hansard*, 20 June 2014, p. 27.

60 Mr Wayne McAndrew, CFMEU Mining and Energy, *Committee Hansard*, 20 June 2014, p. 28.

2.41 The 2009 Department of Education, Employment and Workplace Relations, *Report of the Review of Self-insurance arrangements under the Comcare Scheme* (2009 Department of Education Review) recommended that:'[c]laims arising from injuries sustained during travel to and from work and off-site recess breaks, continue to be excluded.'[61]

2.42 Further, the RIS outlines that the current scenario increases costs for employers as a result of the higher incidence of accepted claims.[62] The government contends that where the employer has no control over the activities of the employee or the environment in which the employee engages in such activities:

> the proper avenue for people to seek recompense for injuries under such circumstances is through the owner of the premises where the injury occurred, not through their employer who has no control over the matter.[63]

2.43 The committee notes that employees who suffer an injury away from their place of work whilst on a recess have other avenues of redress in those circumstances, for example through public liability and compulsory third party insurance schemes. An employee who suffers an injury away from work should seek compensation for their injury directly from the person or organisation who owed the duty of care, rather than from their own employer who has no responsibility for areas over which they have no control.

Abnormal risk of injury

2.44 The amendment under schedule 4 would also repeal and substitute subsection 6(3) of the SRC Act, such that employees who voluntarily and unreasonably submit to an abnormal risk of injury will be excluded from claiming workers' compensation for an injury sustained at their usual place of work.[64]

2.45 Submitters representing employees' rights did not support this amendment, emphasising the lack of protection it would provide for workers, particularly where an employee is asked to undertake a task by their employer and even though the employee understands that they are submitting themselves to an abnormal risk they must weigh that against disobeying the employer's instruction.[65] Witnesses at the hearing also provided testimony about the potential ramifications of this amendment

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61 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.

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

63 The Hon. Christopher Pyne, MP, Minister for Education, *House of Representatives Hansard*, 19 March 2014, p. 2381.

64 Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, ss. 6(3).

65 Slate & Gordon Lawyers, *Submission 2*, p. 7.

on those who work in environments with a significantly higher exposure to risk, for example those working in the mining sector or the police force.[66]

2.46 The government states that the proposed amendment to subsection 6(3) is consequential to the proposed amendments to section 6(1)(b):

> Because subsection 6(1) will no longer apply to injuries sustained away from the place of work during recess break, the reference to an injury sustained at a place or during an ordinary recess is no longer required.[67]

Committee view

2.47 The committee notes a number of concerns raised by witnesses and submitters. However, the committee also notes that a number of the proposed amendments stem from recommendations made by the 2004 Productivity Commission Inquiry and the 2009 Department of Education Review.

2.48 The committee also notes that premiums for employers may disproportionately increase as a direct result of inappropriate access to workers' compensation schemes by employees who suffer injuries away from work.[68] It is the view of the committee that employees injured in these circumstances should claim compensation from the person or organisation that owed them the duty of care during a recess, rather than from their employer.

2.49 The committee is persuaded that, on balance, the legislative response is proportional and reasonable, such that the amendments would respond to community expectations and ensure that the high importance that is placed on adhering to work health and safety requirements is not demeaned by employee misconduct.

66 Mr Wayne McAndrew, CFMEU Mining and Energy, *Committee Hansard*, 20 June 2014, pp 22–23; Mr Rogan McMahon-Hogan, Australian Federal Police Association, *Committee Hansard*, 20 June 2014, pp 24–25.

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

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

Recommendation 1

2.50 The committee recommends that the Senate pass the bill.

Senator Bridget McKenzie
Chair