



Safety Rehabilitation and Compensation and Other Legislation Amendment Bill 2006

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Safety Rehabilitation and Compensation and Other Legislation Amendment Bill 2006

Date introduced: 30 November 2006.

House: House of Representatives

Portfolio: Employment and Workplace Relations

Commencement: Sections 1 to 3 commence on Royal Assent. Items 1-21, 23, 25 and 28-48 in Schedule 1 and items 1-40 in Schedule 2 commence the day after Royal Assent. Items 22, 24 and 26-27 in Schedule 1 commence on a day to be fixed by Proclamation, or failing that, six months after Royal assent.

Purpose

The purpose of the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 (the Bill) is to amend the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) - which is the legislative basis for the Commonwealth workers' compensation scheme - so as to:¹

- substantially tighten the connection which a disease must have with an employee's employment
- amend the definition of 'injury' to exclude injuries arising from reasonable administrative action taken in a reasonable manner
- remove claims for injuries which occur travelling to and from the work place, and also during work recess breaks not taken at the workplace
- amend the calculation of retirees' incapacity benefits to take account of changes in interest rates and superannuation fund contributions
- update measures for calculating benefits for employees, including the definitions of 'normal weekly earnings' and 'superannuation scheme'
- ensure that all potential earnings from suitable employment can be taken into account when determining incapacity payments
- enable authorities to directly reimburse health care providers for the cost of their services to injured employees, and
- increase the maximum funeral benefits payable.

The Bill also includes minor technical amendments to the SRC Act, including a substantial number of consequential amendments to the *Legislative Instruments Act 2003*, which commenced on 1 January 2005.

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In addition, an amendment to the funeral benefit provisions of the *Military Compensation and Rehabilitation Act 2004* is proposed to maintain parity with benefits under the SRC Act.

Background

The SRC Act is the legislative basis for the Commonwealth workers' compensation scheme. It establishes and regulates the scheme for compensating and rehabilitating Commonwealth workers who are injured either out of or in the course of their employment.² The Act was designed to be beneficial in its application and operates as a no-fault scheme.

The SRC Act applies to injured Commonwealth workers (except members of the Australian Defence Force, who are covered by separate legislation) regardless of the State or Territory they work in. A Commonwealth employee is limited to compensation under the SRC Act and does not have entitlements under State or Territory workers' compensation schemes. The SRC Act also applies to non-Commonwealth employees where the employer corporation is licensed under s.103 of the SRC Act.³

Basis of proposed amendments

In his first and second reading speeches of the Bill in 2006, the then Minister for Employment and Workplace Relations, Kevin Andrews, MP explained the main basis for the proposed amendments as being:

primarily to maintain the financial viability of the Commonwealth workers' compensation scheme and to improve the administration and provision of benefits under the scheme. The scheme has come under added pressure in recent years from increasing numbers of claims, longer average claim duration and higher claim costs.⁴

The Minister also attributed the rise in costs (in part) to:

- court interpretations of the legislation, some of which have departed from the initial intent of the legislation⁵ [and have] expanded the scope of the scheme, beyond what was initially intended by the previous government and agreed by this parliament.⁶

Nevertheless, there are some concerns that the amendments in the Bill are not as consistent with the original purpose as the Government suggests.

The intention of the legislation in 1988

In his second reading speech on 27 April 1988, the then Minister for Social Security, Brian Howe, MP, made a number of points in relation to the object and purpose of the formerly

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named Commonwealth Employees' Rehabilitation Bill 1988 (subsequently re-named the SRC Act). The then Minister stated that:

Benefits Package

The main aspects of the new scheme are a better range of benefits for injured employees. The benefits package is aimed specifically at assisting those employees most in need - that is, the long-term incapacitated workers.

The required work-injury nexus

Under the [pre-1988] Act an employee is required to establish only that his or her employment was a contributing factor in the contraction of a disease. This test does not adequately reflect the rights and obligations of the Commonwealth and its employees in relation to work-related disease and frequently results in the Commonwealth being liable to pay compensation for diseases which have little, if any, connection with employment. This Bill seeks to remedy that situation by requiring an employee to show that his or her employment contributed in a material degree to the contraction of the disease.

An employee will not be required to show that his or her employment caused the disease, or even that it was the most important factor in the contraction of the disease. It is intended that the test will require an employee to demonstrate that his or her employment was more than a mere contributing factor in the contraction of the disease. Accordingly, it will be necessary for an employee to show that there is a close connection between the disease and the employment in which he or she was engaged.

Introduction of journey and recess break claims

The Bill will extend coverage to employees injured during ordinary recesses, such as lunch breaks [...]. The journey provisions [would require] that journeys to or from the place of employment must commence or terminate at the employee's place of residence.

Financial implications

The financial impact statement contained in the Explanatory Memorandum to the current Bill, estimates that the amendments to the SRC Act will bring about a reduced call on Comcare's premium pool of approximately \$20 million per annum.⁷ This reduction on the premium pool may have a positive impact on the premiums for workers' compensation under the Comcare scheme.

It is expected that the amendments to the definitions of 'injury' and 'disease' in the SRC Bill will yield savings of \$5 million per annum to Comcare's premium pool. Along with these savings to the premium pool, it is expected that the amendments will also bring

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about savings of \$1.8 million per annum to self-insurers under the Commonwealth workers' compensation scheme.

It is anticipated that the amendments to the treatment of recess break claims and journey claims will also result in savings of \$15 million per annum to Comcare's premium pool along with savings of \$5.4 million per annum to self-insurers under the scheme.

As can be seen, these net savings will be shared amongst self-insurers under the scheme and all Commonwealth agencies and departments covered by Comcare.

Main provisions

Item 9 – Subsection 4(1) - paragraph (a) of the definition of suitable employment

Item 9 of the Bill amends the definition of '**suitable employment**' and expands its capture so that an employee's capacity to work outside Commonwealth employment (or employment by a licensed corporation) may also be considered when calculating their weekly incapacity payments payable under section 19 of the SRC Act.

Where a non-retired employee has suffered an injury and the injury results in incapacity, subsection 19(2) of the SRC Act provides a formula for calculating the weekly compensation of an incapacitated employee. Basically, the calculation involves deducting the greater of either the amount the employee is able to earn in '**suitable employment**', or is actually earning, from the employee's normal weekly earnings.

Section 4(1) of the SRC Act defines 'suitable employment' in relation to a person who has suffered an injury in respect of which compensation is payable to mean:

- (a) **in the case of an employee, who was a permanent employee of the Commonwealth or a licensed corporation (at the date of injury) and who did not subsequently voluntarily terminate their employment** – work for which the employee is suited having regard to four tests⁸.
- (b) **in any other case** (eg Resignations; deemed resignations through failure to attend work; voluntary redundancies) – **any employment (including self-employment) having regard to the same four tests used for employees in paragraph (a).**

The significance of being placed in category (a) as opposed to category (b) lies in the fact that category (a) allows account to be taken only of employment with the Commonwealth (or a licensed corporation) whereas paragraph (b) takes account of employment in the general labour market and self-employment. This is consistent with the intention of the government and the Parliament in 1988. In his second reading speech on 27 April 1988, the then Minister for Social Security, Brian Howe, MP stated that:

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Suitable employment for an employee who is permanently employed by the Commonwealth will mean employment by the Commonwealth or a statutory authority.

The targets of the proposed amendment

Under the current legislation, where it is the Commonwealth (or a licensed corporation) that is responsible for terminating a **permanent employee's** employment (eg through invalidity retirement, retrenchment or some other method) and the employee otherwise satisfies the definition in paragraph (a)⁹ then they will be placed in category (a)¹⁰ as the initial step toward determining what qualifies as **'suitable employment'**. Thus in such circumstances, the courts have held that **'suitable employment'** continues to mean suitable employment with the Commonwealth (or licensed corporation). This is arguably both logical and appropriate given that the reason for the permanent employee's termination from their employment arises not from any action or omission on their part.

The Explanatory Memorandum suggests that the practical effect of limiting the ambit of what counts as **'suitable employment'** for such employees is to provide a disincentive for those employees to seek other employment as they may simply rely on the maximum compensation benefit.¹¹

The proposed amendment to the definition of **'suitable employment'** will not only enable Comcare to take into account both **actual and potential earnings** when calculating amounts that may be realised from employment with the Commonwealth (or licensed corporation) or any other type of employment; it will also assist the employer in their duty under section 40 of the SRC Act in helping an employee to find suitable employment outside the Australian Public Service. This has been a particular problem in regional areas where Commonwealth employment opportunities have been limited and so assisting the employee in returning to employment – which is one of the main objects of the SRC Act – has been frustrated by the current exclusion of non-Commonwealth employment from the current definition of **'suitable employment'**. This proposed amendment seeks to address this problem and deliver with it the positive benefits of having an employee return to the workforce.

Item 10 – Subsection 4(1) - definition of superannuation scheme

This amendment expands the definition of a **'superannuation scheme'** to include a **retirement savings account**.

Under subsection 4(1) of the SRC Act, **'superannuation scheme'** means any superannuation scheme under which the Commonwealth, a Commonwealth authority or a licensed corporation makes contributions on behalf of employees.

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Sections 20, 21 and 21A of the SRC Act currently operate to reduce the weekly amount of compensation benefits accordingly, where an injured and retired employee is a member of a superannuation scheme and they are in receipt of a superannuation benefit.

However, where an employee is in receipt of superannuation payments from a non-defined superannuation scheme, then those payments are not captured by the current definition of superannuation scheme and thus are not taken into account.

Item 11 – Subsection 5 – stricter definitions of ‘injury’ and ‘disease’

The current law

The essential information to be imparted by an employee presenting a claim for compensation under the SRC Act, are [details of] the nature of the injury or [disease] and its connection with the employment.¹² However, under the SRC Act, the amount and type of compensation that an employee is entitled to receive does not turn on whether an employee has suffered a work-related injury as opposed to a work-related disease. Rather, the relevance of providing details of the nature of the ‘injury’ or ‘disease’ stems from their different legal meanings, resulting in different legal consequences, in terms of the different evidentiary requirements necessary to establish a work related ‘injury’ as opposed to a work related ‘disease’.¹³

Thus, where an employee suffers “an injury within the protected period of employment, it is ordinarily compensable without proof of a specific causal connection with the worker’s employment”.¹⁴ In contrast, where an employee suffers a disease, at work or otherwise, the disease is only compensable if the employment in which the employee was engaged contributed in a material degree to the contraction of the disease.¹⁵

Item 11 creates new tighter definitions of ‘**injury**’ and ‘**disease**’ (in **new sections 5A and 5B respectively**) that are designed to deliberately restrict the circumstances under which an employee is entitled to compensation under the SRC Act.

These new definitions of ‘**injury**’ and ‘**disease**’ replace the existing definitions under subsection 4(1) of the SRC Act.

New Section 5A – Definition of injury

Operating as an absolute defence, the SRC Act contains five exclusionary provisions,¹⁶ the successful operation of any one of which may serve to defeat an employee’s claim for compensation that otherwise satisfies the entitlement provisions within the SRC Act.

Two of these exclusionary provisions are contained in the existing definition of injury under the SRC Act. ‘**Injury**’ means:

- (a) a disease suffered by an employee; or

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(b) an injury (other than a disease) suffered by an employee, being a physical or mental injury arising out of, or in the course of, the employee's employment; or

(c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee's employment), being an aggravation that arose out of, or in the course of, that employment;

'Injury' does not include:

any such disease, injury or aggravation suffered by an employee as a result of **reasonable disciplinary action** taken against the employee **or failure by the employee to obtain a promotion, transfer or benefit** in connection with the employee's employment.¹⁷
[Emphasis added]

The purpose of the **new subsection 5A(1)** is to clarify that the exclusions are to be extended to all **reasonable management activities**.

Under the **proposed subsection 5A(1)** the definition of **injury does not include** a disease, injury or aggravation suffered as a result of **'reasonable administrative action'** taken in a reasonable manner in respect of an employee's employment.

What is captured under the rubric of **reasonable administrative action**?

The new **subsection 5A(2)** lists a range of matters that may fall within the term **'reasonable administrative action'**. These include but are not confined to the following:

- (a) a reasonable appraisal of the employee's performance;
- (b) a reasonable counselling action (whether formal or informal) taken in respect of the employee's employment;
- (c) a reasonable suspension action in respect of the employee's employment;
- (d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee's employment;
- (e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c) or (d);
- (f) anything reasonable done in connection with the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment.

The Law Council of Australia has raised concerns over the clarity of the provision. They have offered the following opinion:

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The extension of the exclusionary provision to reasonable ‘administrative action’ takes this exclusion too far. On one interpretation, it might be considered that all Government actions (and not just disciplinary ones) can be regarded as ‘administrative action’. Another danger of excluding all injuries arising from all ‘reasonable administrative action’ under a no fault scheme is that certain judgements about fault must be imported. The basic premise upon which various Australian workers compensation schemes are based is that ‘reasonableness’ of a particular action or omission is excluded (hence, the term ‘no-fault’). The aim historically was to provide workers with a defined benefit in the event of incapacity. Questions of fault have historically been handled by the courts.¹⁸

The impetus for this amendment

The Explanatory Memorandum states that a number of court and tribunal decisions have given the term ‘**disciplinary action**’ a very narrow interpretation, largely confining its meaning to formal disciplinary action, or action pursuant to an award or certified agreement. Such decisions are argued to impact on the capacity for legitimate management action. They have also increased the potential financial liability of the scheme by enabling successful claims to be made for injuries (usually psychological injuries) arising out of circumstances which were not intended to have been covered by the SRC Act. Hence the following circumstances have been found not to constitute disciplinary action:

- investigations to determine whether a probationary appointment should be annulled
- investigations to determine whether formal proceedings should be instituted, and
- management counselling.¹⁹

The Explanatory Memorandum offers two cases by way of illustrative examples.²⁰

In *Re Tan and Comcare* (1997), the Administrative Appeals Tribunal (AAT) held that a session described as a ‘counselling session’ was not counselling but a preceding step, a ‘discussion, an investigation of complaints’, which did not attract the ‘disciplinary action’ exclusion. In *Re Murray and Comcare* (1998), the AAT held that ‘disciplinary action’ did not include investigations undertaken prior to formal disciplinary action under section 61 of the Public Service Act 1922.

It is noteworthy that while the Tribunal in *Re Tan and Comcare* held that a ‘counselling session’ did not attract the exclusion, in the case of *Re Murray and Comcare* a counselling session was considered to fall within the terms of disciplinary action. Furthermore, the decision by the AAT in *Re Murray and Comcare* not to include ‘investigations undertaken prior to formal disciplinary action under section 61 of the *Public Service Act*’ is perhaps appreciated in a different light with slightly more context given to it. In *Re Murray and Comcare* the AAT held that:

An investigation of a grievance is not disciplinary action. That investigation may lead to the Secretary’s forming an opinion at a later time that an officer has failed to fulfill

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his duty as an officer and decide to take disciplinary action. Until the Secretary does that, there is no disciplinary action.

Reasonable disciplinary action, and an injury arising out of the failure to obtain a promotion, transfer or benefit – the current state of play

Disciplinary action

Until recently, a leading authority on the term ‘**disciplinary action**’ was the Federal Court decision *Comcare v Chenhall* (1992) 37 FCR at 75. In *Chenhall* Cooper J held that the action taken to determine whether or not disciplinary action will be taken against an employee, although it may be characterised as part of a system or process to maintain discipline, is not action within the meaning of the definition. The decision in *Chenhall* meant that unless disciplinary action had been formerly commenced, the exclusion would not apply. Until recently, it was not uncommon for hearings at the AAT to be determined dependant on whether the formal process of disciplinary action had actually commenced.

However, in the more recent decision of *Hart v Comcare* (2005), the Full Court of the Federal Court seems to challenge this position. In *Hart*, Branson, Conti and Allsop JJ accepted the single Judge decision of Whitlam J in the first instance, finding that the Tribunal drawing a distinction between the process behind a promotion, and the promotion itself, was spurious. Although the *Hart* decision related to a failure to obtain a promotion, it is likely that the principle in *Hart* will apply equally to other exclusionary provisions such as reasonable disciplinary action.

Following the decision in *Hart*, the interpretation of the ambit of the exclusionary provisions will likely be extended to apply to the process behind reasonable disciplinary action. However, for the process behind the disciplinary action to be exclusionary, the contributing factors which caused the injuries must form part of the disciplinary action, and not be determined by a Tribunal or Court to be something other than disciplinary action.

Failure to Obtain Promotion, Transfer, Benefit

As with reasonable disciplinary action discussed above, the principles in *Chenhall* and *Hart* apply.

The *Hart* decision has effectively removed the distinction between promotion, transfer and benefit and the process leading to promotion, transfer and benefit. An employee who suffers an injury as a result of the process behind the promotion, transfer or benefit will likely be excluded from an entitlement to compensation under the SRC Act.

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Obtain/Retain

Historically, the Courts have been inclined to read the word ‘obtain’ with regard to ‘failure to obtain a promotion, transfer or benefit’ strictly.

In *Re Davill and Australian Postal Corporation* (1995) the restructure of the employee’s workplace meant that the employee faced a downgrading in the position and this was a large contributor to the development of a depressive illness. The AAT held that the injury suffered as a result of this was not caught by the exclusion. It was held that:

It could not be said that the downgrading of the Applicant’s position was a failure to obtain a benefit.

The Tribunal found that the word ‘obtain’ could not be reasonably extended so as to include the retention of a benefit.

The Federal Court in *Comcare v Ross* (1996) FCA 680 did not set aside a Tribunal decision where the Tribunal found that the word ‘obtain’ did not mean retain, but rather had a commonsense meaning of to ‘acquire’. In *Ross* Finn J said, by way of obiter dictum, that it is wholly reasonable to assign the ordinary meaning to the word ‘obtain’. Tribunal decisions have since accepted the obiter in *Ross* and held that the failure to **retain** a promotion, transfer of benefit does not come within the exclusionary provision.

The operation of the **new subsection 5A(2)** and the non-exhaustive list of matters that it contains may have the effect of reducing the success of claims such as those above.

New Section 5B – Definition of disease

Under subsection 4(1) of the current SRC Act, ‘**disease**’ means **any** ailment suffered by an employee, or the aggravation of any such ailment that was **contributed to in a material degree** by the employee’s employment by the Commonwealth or licensed corporation. Ailment means any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development).

In his first and second reading speeches of the Bill in 2006, the Minister for Employment and Workplace Relations, Kevin Andrews, MP expressed concern that:

- the scheme has come under added pressure in recent years from increasing numbers of claims, longer average claim duration and higher claim costs.²¹
- [and] this is in part a result of court interpretations of the legislation, some of which have departed from the initial intent of the legislation²² [and have] expanded the scope of the scheme, beyond what was initially intended by the previous government and agreed by this parliament.²³

The Explanatory Memorandum re-states this concern.

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The original intention of the legislation in 1988 is gauged by reference to the Second Reading Speech to the *Commonwealth Employees' Rehabilitation Act 1988* (subsequently re-named the SRC Act). The intention was to avert and redress a situation of the "Commonwealth being liable to pay compensation for diseases which have little, if any, connection with employment". This resulted in the introduction of a test that required a claimant to show that their employment 'contributed in a material degree' to the contraction of the disease.

The then Minister also explained that:

- An employee will **not be required to show** that his or her **employment caused the disease**, or even that it was the **most important factor** in the contraction of the disease. (Emphasis added)
- It is intended that the test will require an employee to demonstrate that **his or her employment was more than a mere contributing factor** in the contraction of the disease. Accordingly, it will be **necessary** for an employee **to show** that there is a **close connection between the disease and the employment** in which he or she was engaged. (Emphasis added)
- In determining whether employment contributed in a material degree to the contraction of the disease in a particular case, regard would be had to whether the employment in which the employee was engaged carried an inherent risk of the employee contracting the disease in question and whether some characteristic or feature of the employment tended to cause, aggravate or accelerate the disease.

The Explanatory Memorandum points out that the courts have been inclined to read down the expression '**contributed to in a material degree**' so as to emphasise the causal connection between the employment and the condition complained of rather than the extent of the contribution that an employee's work has made to the development of the disease. Hence, the aim of this proposed amendment is to redress the apparent diversion from what is the actual intended policy behind the SRC Act — denying claims for diseases to which an employee's work has only made a minor contribution.²⁴

The proposed amendment to the definition of 'disease' is informed by the 2004 report of the Productivity Commission on the [*National Workers' Compensation and Occupational Health and Safety Frameworks*](#). In that report, the Productivity Commission reflected on the fact that jurisdictions, to a varying degree, also include a test of the degree of contribution to the illness or injury from employment, and recommended a strengthening between the required causal connection and an employee's employment and the contraction or aggravation of a disease be strengthened.²⁵ The Explanatory Memorandum anticipates that this would result in a benefit for self-insurers by reducing the incidence of compensable claims, thus offering the possibility for a reduction in worker's compensation costs.²⁶

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The jurisprudence on disease

Where an incapacitating condition is shown, the inability to precisely identify and name a compensable disease is not absolutely necessary;²⁷ however, it may be a factor which mitigates against a finding of a causal link with employment, but is not necessarily an insuperable obstacle to such a finding.²⁸

There is also a need to establish that in doing work, the employee was exposed to ‘a state of affairs to which they would otherwise would not have been exposed’ or to some “characteristic or condition in which the work was to be performed” and that this was a contributing factor to the condition complained of.²⁹

‘Contributed to in a material degree’

Until recently the leading authority as to what constitutes ‘**material contribution**’ was the Full Court of the Federal Court decision of *Treloar v Australian Telecommunications Commission* (1990). This is despite the fact that *Treloar*’s case was expressly limited to a consideration of the 1971 Act in which the word ‘material’ did not appear. The Full Court in *Treloar* held:

The use of the word ‘material’ in conjunction with the words ‘contributing factor’ in the legislation, where it has occurred in expositions of the section in other cases clearly is not intended to add to the section any significance which is not already to be found in the words used by the legislature. It has served only to emphasise that the section is not brought into play unless it be established by evidence that features of the employment did in fact and in truth contribute to the condition complained of. The causal connection must be established on the probabilities and not left in the area of possibility or conjecture. Once the link is established, however, it matters not that the contribution be large or small.

‘**Material contribution**’ was considered by Von Dousa J in the Federal Court decision *Wiegand v Comcare Australia* (2002) FCA 1464. At paragraph 31 Von Dousa J held:

In my opinion it was open on the evidence for the Tribunal to hold that one or more of the incidents or states of affairs about which Mr Wiegand raised complaint in the course of his evidence contributed in a material degree to an aggravation of the depressive disorder suffered by Mr Wiegand. For that to be the case there is no requirement at law that the interpretation placed on the incident or state of affairs by the employee, or the employee's perception of it, is one which passes some qualitative test based on an objective measure of reasonableness. If the incident or state of affairs actually occurred, and created a perception in the mind of the employee (whether reasonable or unreasonable in the thinking of others) and the perception contributed in a material degree to an aggravation of the employee's ailment, the requirements of the definition of disease are fulfilled.

The decision of the Federal Court in *Wiegand* means that if an employee has a perception of a state of affairs and that state of affairs actually occurred, then the employee’s

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condition is compensable if the state of affairs materially contributed to the employee's condition, regardless of other contributing factors.

More recently, the term '**material contribution**' was considered in the Full Court of the Federal Court decision *Comcare v Canute* (2005) FCAFC 262. On 16 December 2005 the majority in *Canute*, French and Toner JJ, held:

On this basis, the observations of the Full Court in *Treloar* at 323 that the relevant causal connection must be established on the balance of probabilities and not left in the area of possibility of conjecture are not controversial. Equally, it is plain that the present legislation was not intended to require that an employee demonstrate that their employment caused the disease or that it was the most important factor. It would also appear that the imposition of a 'but for' test remains inappropriate. Having said this, the changes brought about by the enactment of the SRC Act were intended to require that the contribution be 'more than a mere contributing factor' and, as such, the comments of the Court in *Treloar* must be assessed in this light. Content must be given to the word 'material' contained in the definition of 'disease' in the legislation as it presently stands. The inclusion of this term imposes an evaluative threshold below which a causal connection may be disregarded. However, it is not necessary for present purposes to consider the proper meaning of 'material' and nothing more need to be said about this issue.

The majority in *Canute* have 'tightened' the test in *Treloar* to require that the employee's employment must be more than a mere contributing factor to satisfy the requirement of 'material contribution'.

In summary, for a disease to be compensable under the SRC Act, the employment of the injured worker must be found to have 'materially contributed' to the disease, that is, there must be a link between the disease and the employment (*Treloar*) and the contribution must be 'more than a mere contributing factor' (*Canute*).

Notwithstanding the fact that the law as it currently stands appears to conform with the original legislative intent, it would appear that the proposed amendment is driven by a desire to leave no room for doubt. However, the strength of the wording in the proposed amendment noticeably goes beyond the original legislative intent (see below).

New definition of 'disease'

The proposed amendment in the current Bill purports to achieve this same state of affairs by defining '**disease**' to mean "**an** ailment suffered by an employee, or an aggravation of such an ailment that was **contributed to, to a significant degree** by the employee's employment by the Commonwealth or licensed corporation".

Subsection 5B(3) defines '**significant degree**' to mean a degree that is '**substantially more than material**'.

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New subsection 5B(2) – ‘contributed to, to a significant degree’

This subsection provides a non-exhaustive list of factors that may be taken into account in determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee’s employment by the Commonwealth or a licensee.

- (a) the duration of the employment;
- (b) the nature of, and particular tasks involved in, the employment;
- (c) any predisposition of the employee to the disease;
- (d) any activities of the employee not related to his or her employment; and
- (e) any other matters affecting the employee's health.

‘Disease’- no longer ‘any’ ailment but rather ‘an’ ailment

It is interesting to note that the term **disease** is no longer defined to mean ‘any’ ailment but rather ‘an’ ailment. It is unclear as to whether this change is benign or whether it may signal - at least tacitly - a restriction on what diseases may be claimed. If the latter is the case, then it represents an interesting pre-judgement of events and implicitly alters the beneficial and no-fault nature of the scheme.

The employment – disease connection

The requirement that an ailment or its aggravation be “**contributed to, to a significant degree**”, which means **a degree** that is “**substantially more than material**” cannot be so easily reconciled with the intention of the Parliament as expressed in the Second Reading Speech in 1988 (see above).

A number of submissions to the Senate Inquiry into the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 argued that it is important for a test of employment contribution to the development or aggravation of a disease to be based on an element of proportional responsibility.³⁰ It was felt that the lack of proportionality in the proposed amendment will mean that in situations where work contributes to an injury, but is not the primary cause, then it would be unfair for the workplace to escape liability altogether. The concept of proportional responsibility would not be that hard to apply as it is a common approach in car insurance schemes.

Impact on a well-established legal doctrine?

The non-exhaustive list of factors that may be used to determine the contribution made by the employee’s employment to the development or aggravation of an ailment – especially

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factors (c) and (e) - may represent a concerning erosion of what is known as the 'egg shell skull rule'.

The 'egg shell skull rule' is a well established doctrine in both criminal and tort law, and it means that a defendant must 'take their victim as they find them'.³¹ This 'makes a defendant liable for damage of an unforeseeable extent, but not for unforeseeable damage of a different kind'.³² Thus, when a person has a pre-existing vulnerability or medical condition which makes them more susceptible to an injury than an ordinary person, then the defendant will be liable for *all* consequences resulting from their activities leading to an injury to another person.³³ This rule is based primarily on policy grounds. It is not considered acceptable or satisfactory for the defendant to rely on the victim's own vulnerability in order to avoid liability.

The operation of the list contained in **subsection 5B(2)** combined with the requirement that an employee's employment make a **substantially more than material** contribution to the aggravation of a pre-existing ailment, may make it more difficult for a person with a pre-existing ailment to make out a successful claim.

Items 12 and 13 – injuries which occur travelling to and from the work place, and also during work recess breaks

Section 6 of the SRC Act lists the circumstances in which an injury may be treated as having arisen out of, or in the course of an employee's employment. In 1988, the Labor Government extended coverage of the workers' compensation scheme to include injuries sustained during ordinary recesses (e.g. lunch breaks) and also injuries which occurred travelling to and from the workplace.

Recess breaks and absences from the workplace

The Productivity Commission's 2004 report on [*National Workers' Compensation and Occupational Health and Safety Frameworks*](#) recommended the 'restriction of coverage for recess breaks and work-related events on the basis of lack of employer control, to those at workplaces and at employer sanctioned events.'³⁴

The amendments made by **item 12** are informed by the reasoning of the Productivity Commission's report. In this case, injuries that are sustained while an employee is temporarily absent from the workplace during an ordinary recess in employment will no longer be injuries arising out of, or in the course of, employment. This is reflected in **new paragraphs s6(1)(b) and s6(1)(c)**. However, an employee will continue to be covered by the SRC Act for:

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Section 6(1)

(b) Injuries incurred while an employee was at the employee's place of work, including during an ordinary recess, for the purposes of that employment; and - new paragraph 6(1)(b)

(c) Injuries incurred by an employee while the employee is temporarily absent from his or her workplace undertaking an activity associated with their employment or at the direction or request of the employer; or - new paragraph 6(1)(c)

(d) Injuries incurred by an employee while the employee was, at the direction or request of the Commonwealth or a licensee, travelling for the purpose of that employment; or

(e) Injuries incurred by an employee while the employee was at a place of education, except while on leave without pay, in accordance with:

(i) a condition of the employee's employment by the Commonwealth or a licensee; or

(ii) a request or direction of the Commonwealth or a licensee; or

(iii) the approval of the Commonwealth or a licensee; or

(f) while the employee was at a place for the purpose of:

(i) obtaining a medical certificate for the purposes of this Act; or

(ii) receiving medical treatment for an injury; or

(iii) undergoing a rehabilitation program provided under this

Act; or

(iv) receiving a payment of compensation under this Act; or

(v) undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under this Act; or

(vi) receiving money due to the employee under the terms of his or her employment, being money that is available, or reasonably expected by the employee to be available, for collection at that place.

Journeys

The Productivity Commission also recommended that coverage for journeys to and from work not be provided, on the basis of lack of employer control, availability of alternative cover in most instances and the ability to be dealt with under enterprise bargaining.³⁵ Once again, the Government supported these recommendations. The Productivity Commission's

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report also pointed out that such an approach was in conformity with the approach to such claims in jurisdictions such as Victoria, Western Australia, South Australia and Tasmania.³⁶ However, it is unclear as to why emphasis was placed on these states as model templates as opposed to states which do allow for journey claims—and perhaps also of significance, is the fact that the state schemes are not designed to operate beneficially whereas the Comcare scheme is.

New subsection 6(2) makes it clear that for the purposes of paragraph 1(d), travel between the employee's residence and the employee's usual place of work is taken not to be at the direction or request of the employer.

Also, reference to the employee 'travelling' in paragraph 1(d) does not include a reference to travelling to or from a place mentioned in paragraph 1(e) or (f).

The response of interest groups to the restriction of coverage for injuries that occur travelling to and from the work place, and also during work recess breaks

The ACTU has raised the 'but for test' as an objection to the restriction of coverage for injuries which occur travelling to and from the work place, and also during work recess breaks.

Workers only travel to and from work, or only have recess breaks because of a direct connection with their work and as such these situations should be adequately covered by workers compensation legislation.³⁷

Furthermore, the ACTU argue that the removal of this coverage merely represents unnecessary cost shifting from Comcare to either the individual, private insurance companies who offer third party coverage, Medicare, and or Centrelink.

The Communications Electrical and Plumbing Union have added that:

Workers Compensation is beneficial legislation with an underlying premise of "no fault". Arguments to exclude compensation on the basis that the employer has no control or fully complies introduces concepts which if extended would exclude many compensable claims and undermine the whole social framework of workers compensation legislation.³⁸

Item 15 – update measures for calculating benefits for employees, including the definitions of 'normal weekly earnings' and 'superannuation scheme'

Section 19 of the SRC Act provides a method for calculating weekly compensation of an incapacitated employee. The basis for all calculations under s.19 of the SRC Act is a determination of the employee's Normal Weekly Earnings ('NWE'). NWE is defined in s.8 of the SRC Act.

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Subsections 8(6) and 8(7), 8(9) and 8(9A) of the SRC Act provide for an increase to the employee's NWE where the employee's weekly earnings would have increased as a result of age, time of service, increment in salary or promotion. This increase only applies to persons who remain employees of the Commonwealth. These provisions were designed to apply principally to wage increases that occurred either through promotion and/or general wage rises. General wage increases are typically applied to a clearly stated and easily identifiable class of employees, thus the wage increase applied to a particular employee is readily ascertainable, especially if they remained in Commonwealth employment. With recent changes to the industrial relations system and the trend toward wages being predominantly enterprise or individually based, these subsections have increasingly lost their relevance.

New subsections 8(9E), 9(F) and (9G) proposed in the Bill enable a current employee's NWE to be updated by reference to a prescribed index, where the NWE is not capable of being updated under the existing provisions of section 8.

According to the Explanatory Memorandum to the Bill:

The indexation date has been identified as 1 July following the date on which the Act receives the Royal Assent. The index is applicable over the one year ending on 31 December preceding each indexation date. Regulations may specify the manner in which the increase is calculated by reference to the prescribed index.³⁹

Items 17 and 18 – direct payments to providers of medical treatment

Operating as a gateway section, section 16 of the SRC Act does not contain the requirement for liability found under section 14 of the Act.⁴⁰ Thus irrespective of whether an injury suffered by an employee results in death, incapacity for work, or impairment; where a person was an employee at the time they suffered a compensable injury and are able to provide receipts/evidence of their expenditure, Comcare is liable to pay for the cost of the medical treatment obtained in relation to the injury (being treatment that was reasonable for the employee to obtain in the circumstances) compensation of such an amount as Comcare determines is appropriate to that medical treatment - **s16(1)**⁴¹

Subsection 16(4)(a) provides that the amount payable by Comcare under subsection 16(1) is payable to, or in accordance with, the directions of the employee. In practice, most of the medical accounts are lodged directly with Comcare by the actual providers of the medical treatment in the expectation that they will be paid but without any direction from the employee.

The amendments made by **items 17 and 18** will mean that:

- If the employee has already paid the account, then at the direction of the employee, the employee may be directly reimbursed for the cost of that medical treatment –

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amended 16(4)(a). At present, where an employee has directly paid for the medical treatment, then in order to be reimbursed, the employee must have the transaction reversed. The medical provider must then re-generate that original invoice, send it to Comcare and wait for payment. This process can take some time.

- If the cost of the treatment has not been paid for by the employee, then Comcare may pay the provider of the medical treatment directly, without having to obtain a direction from the employee – **new paragraph 16(4)(c)**

Items 19 and 20 – Section 18 an increase in the maximum funeral benefits payable

Section 18 of the SRC Act provides that the maximum amount payable for a deceased person's funeral is \$3,500. Despite the fact that section 13 of the SRC Act provides for annual adjustment of funeral benefits in line with the Consumer Price Index, these adjustments have failed to keep pace with the actual increases in funeral costs.

The proposed amendments would increase the maximum lump sum amount of compensation for a funeral to be set at \$9,000 and a **new paragraph 18(4)(b)** will operate to permit the maximum amount of funeral benefit payable to be increased by way of regulation in the event that the indexation adjustments fail to keep pace with real costs. The regulation-making power is designed only to operate beneficially.

Items 21, 23 and 25 – uniform approach to the receipt of superannuation benefits

Where an employee is in receiving superannuation benefits, **sections 20, 21 and 21A** of the SRC Act currently operate to reduce the weekly amount of compensation benefits accordingly. These subsections apply to an employee who, 'being incapacitated for work...retires voluntarily, or is compulsorily retired'.

In the 2005 Federal Court decision of *Loneragan v Comcare*, Heery J held that the words "being incapacitated" had a present tense and so required that the incapacity for work had to exist "at the same point in time as the retirement".

The implication of this reasoning was that an employee who was incapacitated for work on the day before or after their retirement (but not on the actual day of their retirement) was able to receive incapacity payments unaffected by any superannuation entitlement. In contrast, an employee who was incapacitated on the day of their retirement would have their incapacity payments reduced according to their superannuation entitlement.

The amendments clarify that regardless of the date of incapacity, incapacity payments will be reduced according to superannuation entitlements.

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Items 22, 24, 26 and 27 – the treatment of superannuation lump sum payments

Items 22, 24, 26 and 27 repeal previous provisions in the SRC Act, under which a person's compensation payments were calculated when they also receive either a superannuation pension or a lump sum. The same provisions insert new formula for calculation of a person's compensation payments in the same circumstances.

Item 22 repeals current subsection **20(3)** of the Act and inserts a new provision. The current formula allows the amount of weekly compensation to be reduced by the sum of the 'Superannuation amount' plus the superannuation contribution that the employee would have been required to pay if they were still contributing to a superannuation scheme.

Commonwealth public servants currently may be members of at least four separate schemes.⁴² Members of two of these schemes are required to contribute a set amount from their after tax income, specifically:

- for the Commonwealth Superannuation Scheme (CSS) 5 per cent of the employee's gross wage, and
- for the Public Sector Superannuation Scheme(PSS) at least 2 per cent of the employee's gross wage plus allowances.

The above amounts are the minimum required amounts that have to be paid by a Commonwealth public sector employee who is a member of these schemes. Commonwealth public servants who are members of the other two schemes are not required to make a contribution to these schemes.

The new formula inserted by **item 22** requires that the weekly compensation payment be reduced by the above mentioned superannuation amount plus 5 per cent of the employee's normal weekly earnings.

Potentially, this new subsection will reduce the amount of weekly compensation payments made, compared to what would have been under the currently formula, for members of the PSS at the time the provisions of the Act applied to them. This outcome occurs because the required 2 per cent of a person's wages and allowances (that is the minimum contribution to the PSS) is likely to be lower than the 5 per cent of the employee's normal weekly earnings that will be deducted from the person's weekly compensation payments under the proposed amendment.⁴³ This point also applies to the amendments proposed by **Items 24 and 26** (see below).

Item 24 repeals current **subsection 21(3)** of the Act and substitutes a new subsection. This provision calculates the person's weekly compensation amount in circumstances where that person had received a superannuation lump sum. The amount of weekly compensation is to be reduced by an amount of deemed interest earnings of that lump sum.

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The current **subsection 21(3)** assumes that the rate of weekly interest is effectively equal to 10 per cent per annum. The proposed amendment allows this interest rate to be specified by the Minister for Employment and Workplace Relations by way of a legislative instrument under proposed **subsection 21(5)**. Under this latter subsection the interest rate for these purposes would be determined once a year and would take effect on 1 July following the making of the relevant legislative instrument.

As noted above, the current **subsection 21(3)** sets this rate of interest at 10 per cent per annum. This provision has been criticised as being too high, and not reflecting the overall rate of return that has been achieved by managed investments in the past. This criticism appears justified when the average investment performance of tax advantaged investments, such as superannuation funds, is compared with this notional rate of return. As at 30 June 2006 the average balanced superannuation fund return per annum, over the preceding 10 years, was about 8.8 per cent per annum. Between 1974 and 2006 the average return for a balanced superannuation fund, over the preceding 10 years in each year, varied from 5.9 to 16.4 percent per annum.⁴⁴ Giving the Minister for Employment and Workplace Relations the power to determine this interest rate may lead to more equitable outcomes by allowing that Minister to adjust the interest rate for these purposes in line with recent rates of return achieved by investment markets.

The Commonwealth already sets deemed interest rates for social security purposes. The Minister for Family and Community Services and Indigenous Affairs determines what the deemed rate of investment earnings will be for assets held by recipients of social security pensions and benefits.⁴⁵ It has been suggested that the social security deeming rates be used instead of a rate determined by the Minister for Employment and Workplace Relations.

The social security deeming rates are in fact two separate rates. If a person (or a couple) have financial assets below a certain level (currently \$38 400 for a single and \$63 800 couple) a lower deeming rate is applied to these assets (currently 3.5 per cent p.a.). Financial assets above these thresholds are deemed to earn a higher interest rate (currently 5.5 per cent per annum).⁴⁶ Applying this particular arrangement to the superannuation amounts received by those also receiving weekly compensation payments would be administratively complex. However, the overall approach in setting the social security deeming rates may have been adopted in the policy behind the amendments to **subsection 21(3)** of the Act.

The above mentioned social security deeming rates are changed to reflect changes in investment market rates of return, but they are not set at those levels. Rather, they are set at a level that is below what could be reasonably achieved by investing in various investment markets. This approach was undertaken to:

- allow social security pensioners to invest their funds in very conservative investments, such as special deeming bank accounts, that pay the deemed rates of return, and

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- to encourage the placement of financial assets in investment products that have a reasonable prospect of rates of return higher than the social security deeming rates.

Item 29 – Subsections 37(1) and (2)

As originally enacted in 1988, subsections 37(1) and (2) provided the option for an employer to use a departmental officer (case manager) in order to develop and provide an internal rehabilitation program. This provided the opportunity for cost savings. If however the case manager thought that an external rehabilitation provider was (more) appropriate, then the provider chosen needed to be a Comcare approved provider.

Under the present SRC Act (as amended in 2001), subsection 37(2) does not permit a departmental case manager to develop and/or deliver an internal rehabilitation program.

The **proposed new subsection 37(1)** would enable a rehabilitation authority to make a determination about whether an employee should undertake a rehabilitation program. And the **proposed new subsection 37(2)** provides that where a rehabilitation authority has made a decision that an employee should undertake a rehabilitation program, then they may either provide the rehabilitation program themselves, or use an external Comcare approved rehabilitation provider to provide the program. Thus the amendments reinstate the original provisions in the Act.

Item 30 – Subsection 48(3)

Subsection 48(3) of the SRC Act provides that where an employee recovers damages in respect of a compensable injury and, prior to recovering those damages, received compensation under the Act; then the employee is liable to pay Comcare an amount equal to the amount of that compensation or the amount of the damages received, whichever is less.

The drafting of this provision makes reference to the compensation recoverable as being **‘any compensation under this Act [that] was paid to the employee in respect of the injury, loss or damage’**.

The proposed amendment clarifies that Comcare is able to recover *all* medical expenses paid directly to medical service providers under amended section 16. This is basically in line with the decision of the Federal Court in *Comcare v Fyfe* (1999). In that case, the applicant argued that ‘paid to the employee’ excluded payments made to third parties (eg. for medical expenses) and only applied to payments made directly to the employee. This was rejected by the Court.

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Concluding comments

Overall the proposed amendments are likely to result in a significant pool of savings as indicated by the financial impact statement. However, care must be taken to ensure that this does not unduly and unnecessarily occur at the expense of denying genuine claims and thus weakening the beneficial nature of the scheme. Hence, it seems that a few of the proposed amendments may require a rethink with corresponding safeguards.

Endnotes

1. Explanatory Memorandum, p. i.
2. Subsection 6(1) SRC Act
3. Licensed corporations presently include ADI Limited, Australian Air Express Ltd, Australian Postal Corporation, Network Design and Construction Limited, Pacific National (ACT) Limited, Reserve Bank of Australia, Telstra Corporation Limited, Visionstream Pty Ltd and Optus.
4. Hon. Kevin Andrews (Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service), 'Second Reading Speech: Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006', 7 December 2006.
5. Hon. Kevin Andrews (Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service), 'First Reading Speech: Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006', 30 November 2006.
6. *op. cit.*, Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006: Second Reading Speech, 7 December 2006.
7. Explanatory Memorandum, p. ii.
8.
 - (i) the employee's age, experience, training, language and other skills
 - (ii) the employee's suitability for rehabilitation or vocational training
 - (iii) where the employee is available in a place that would require the employee to change his or her place of residence – whether it is reasonable to expect the employee to change his or her place of residence
 - (iv) any other relevant matter
9. *Comcare and Chenhall* (1996) AATA 6491.
10. *Re Pulitano and Telstra Corporation Limited* (1996) AATA 11397.
11. Explanatory Memorandum, p.3.
12. *Frosch v Comcare* [2004] FCA 1642.

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- 13 *Commonwealth v Pisani* (1987) 12 ALD 299.
- 14 *Higgins v Galibal Pty Ltd* (1998).
- 15 *Welsford and Commonwealth Banking Corporation* (1984) 5 ALN N570.
- 16 The five exclusory provisions which may defeat a claim for compensation are:
 1. An injury arising out of reasonable disciplinary action - s4(1).
 2. An injury arising out of the failure to obtain a promotion, transfer or benefit - s4(1).
 3. Intentionally self inflicted injuries - s14(2).
 4. Injury caused by serious and wilful misconduct - s14 (3).
 5. Wilful and False Representation - s7(7).
- 17 Subsection 4(1) SRC Act.
18. Law Council of Australia, *Submission 19*, p. 4. Senate Inquiry into the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006.
- 19 Explanatory Memorandum, p. iv –v.
- 20 *ibid*, p. v.
- 21 *op. cit*, Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006: Second Reading Speech, 7 December 2006.
- 22 *op. cit*, Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006: First Reading Speech, 30 November 2006.
- 23 *op. cit*, Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006: Second Reading Speech, 7 December 2006.
- 24 Explanatory Memorandum, p. 5.
- 25 Productivity Commission Inquiry Report, [*National Workers' Compensation and Occupational Health and Safety Frameworks*](#) 16 March 2004, p.179. For example, in Victoria and Queensland, an employee's employment must be "a significant contributing factor" for a disease to be compensable. In Western Australia, employment must be "a contributing factor and contribute to a significant degree". In Tasmania and the Australian Capital Territory, employment must be "a substantial contributing factor".
- 26 Explanatory Memorandum, p. vii.
- 27 *Re Musumeci and Department of Health (Northern Territory)* (1990) ALD 797; *Re Mackie and Australian Telecommunications Corporation* (1991) AATA 6804.
- 28 *Australian Postal Corporation v Lucas* (1991) 33 FCR 101.
- 29 *Treloar v Australian Telecommunications Commission* (1990) 26 FCR 316.
- 30 Superannuated Commonwealth Officers' Association, *Submission 9*, p. 6. Also, see: Law Council of Australia, *Submission 19*, p. 4 and Community and Public Sector Union, *Submission 16*, p. 4. Senate Employment, Workplace Relations and Education Legislation

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Committee Inquiry into the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006.

- 31 Smith v. Leech Brain and Co. Ltd. (1962) 2 QB 405.
- 32 In *Kavanagh v. Akhtar* (1998) 45 NSWLR 588 at 600 Mason P. referred to the decision of *Commonwealth v. McLean* (1996) 41 NSWLR 389 at 402-407 and derived that proposition.
- 33 *Bourhill v Young* [1943] AC 92 at 109-110 per Lord Wright; *Beavis v Apthorpe* (1962) 80 WN (NSW) 852 at 857 per Herron CJ.
- 34 Productivity Commission Inquiry Report, [National Workers' Compensation and Occupational Health and Safety Frameworks](#) 16 March 2004, p.XLII.
- 35 *ibid*
- 36 *ibid*, p. 182.
- 37 ACTU *Submission 26*, p.10. Senate Employment, Workplace Relations and Education Legislation Committee Inquiry into the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006.
- 38 Communications Electrical Plumbing Union, *Submission 24*, pp. 2-3. Also, see Australian Manufacturing Workers' Union, *Submission 13*, p. 7; Community and Public Sector Union, *Submission 16*, pp. 6-7; Financial Sector Union of Australia, *Submission 28*, p. 2.
- 39 Explanatory Memorandum, p. 8.
- 40 Section 14 makes Comcare liable to pay compensation in respect of a compensable injury suffered by an employee if the injury results in death, incapacity for work or impairment.
- 41 *Lees v Comcare* (1999) FCA 753.
- 42 The four schemes are: the Commonwealth Superannuation Scheme, the Public Sector Superannuation Scheme, the Public Sector Superannuation Scheme – Accumulation Plan and if the employee is ineligible for membership of these schemes the Australian Government Employees Superannuation Trust. Members of the latter two schemes may choose to be members of other complying superannuation funds.
- 43 A person would have to be receiving an unusually large allowance in the week that they ceased employment for the minimum required contributions under the PSS to be higher than 5 per cent of their normal weekly earnings. A balanced superannuation fund invests in a broad range of asset classes such as property, equities and fixed interest.
- 44 Anthony Serhan, Head of Research Morningstar Research Services, 'Double Digit Dreaming', *Superfunds*, November 2006, p. 72.
- 45 Section 1082 *Social Security Act 1991*.
- 46 The Hon. Mal Brough MP, Minister for Family and Community Services and Indigenous Affairs and the Hon Joe Hockey MP, Minister for Employment and Workplace Relations and the Hon. Julie Bishop MP, Minister for Education, Science and Training, '[Deeming rates increase to reflect higher market returns](#)', *Media Release*, 9 March 2007.

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