



Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011

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Law and Bills Digest Section

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Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011

Date introduced: 23 March 2011

House: House of Representatives

Portfolio: Education, Employment and Workplace Relations

Commencement: On the day after the Royal Assent

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

Purpose

The primary purpose of the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011 (the Bill) is to amend the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) to:

- enable Comcare to access the Consolidated Revenue Fund (CRF) to pay compensation claims in respect of diseases with a long latency period
- allow for continuous workers' compensation coverage for employees while overseas and who are in a declared place, or who belong to a declared class of employee
- re-instate claims arising from off-site recess injuries
- allow compensation for medical expenses to be paid, where payment of other compensation is suspended, and
- allow for time limits for claim determination.

History of the Bill

The Occupational Health and Safety and Other Legislation Amendment Bill 2009 (the original Bill) was introduced into the House of Representatives on 26 November 2009 but lapsed when the Parliament was prorogued on 19 July 2010.¹ This Bill is not identical to the original Bill although

1. For information about, and the background to, the original Bill see P Pyburne, *Occupational Health and Safety and Other Legislation Amendment Bill 2009*, Bills Digest, no. 78, 2009–10, Parliamentary Library, Canberra, 6 January 2010, viewed 8 April 2011, <http://www.aph.gov.au/library/pubs/bd/2009-10/10bd078.pdf>

some matters are contained in both.² Coverage for certain employees is an additional issue that has been introduced arising as a result of the establishment of the Australian Civilian Corps following the enactment of the *Australian Civilian Corps Act 2011*. The remaining matters are drafted in similar terms to the provisions of the original Bill.

Background

The *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) provides the legislative basis for the Commonwealth workers' compensation scheme which includes:

- the payment of the reasonable cost of medical treatment
- income replacement for periods of incapacity for work
- payment of a lump sum for permanent impairment, and
- payment for rehabilitation programs.

The SRC Act applies to all Commonwealth employees (including members of the Australian Defence Force), employees of certain private sector corporations and ACT public service employees. Comcare is a Commonwealth statutory authority established under the SRC Act.

Basis of policy commitment

On 23 January 2008, the then Minister for Employment and Workplace Relations, Julia Gillard, announced the terms of reference for a review of the Comcare scheme and invited written submissions from interested parties.³ A background information paper was released with the terms of reference to provide the framework for the review.⁴ Although the consultation period was relatively short, some 80 submissions were received.⁵

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2. Occupational Health and Safety and Other Legislation Amendment Bill 2009 homepage: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4259%22>
 3. J Gillard (then Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion), *Minister announces terms of reference for Comcare review*, media release, 23 January 2008, viewed 8 April 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FQCHP6%22>
 4. Department of Education, Employment and Workplace Relations, *Review of self-insurance arrangements under the Comcare scheme: background information paper*, Commonwealth of Australia, Canberra, January 2008, viewed 8 April 2011, <http://www.deewr.gov.au/WorkplaceRelations/Policies/ComcareReview/Pages/background.aspx>
 5. The full text of the submissions can be viewed at the Department of Education, Employment and Workplace Relations website, viewed 8 April 2011, <http://www.deewr.gov.au/WorkplaceRelations/Policies/ComcareReview/Pages/publishedsubs.aspx>

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The final report of the Comcare review was released on 25 September 2009.⁶ At the same time, the Minister announced a number of improvements to the Comcare scheme.⁷ Some of the amendments in the Bill arise from the review.

Committee consideration

At its meeting of 24 March 2011, the Selection of Bills Committee deferred consideration of the Bill until the Selection of Bill Committee's next meeting.⁸

The provisions of the original Bill were referred to the Senate Education, Employment and Workplace Relations Committee (the Senate Committee) for inquiry and report by 25 February 2010.⁹ Some of the comments made by the Senate Committee in relation to the original Bill are relevant to this Bill. Those comments are canvassed under the heading of Main issues.

Financial implications

According to the Explanatory Memorandum:

It is estimated that the amendments to the [SRC Act] reinstating **coverage for off-site recess breaks** will cost Comcare \$1.7m for 2010/11 and the same for the forward years (adjusted for indexation of 4.5% p.a.). It is estimated that some 23% of medical costs (which are 25% of total claim costs) would otherwise be claimable through either Medicare or the Pharmaceutical Benefits Scheme (PBS). Therefore the proposal would result in a net savings to the PBS of \$136,000 for 2010/11 and the same amount indexed for medical cost inflation over the forward years.

It is estimated that the amendments to the SRC Act that will allow the **payment of medical costs** while an employee's other benefits are suspended, will cost Comcare's premiums pool \$24,000 for 2010/11 and the same for the forward years (adjusted for indexation of 4.5% p.a.).

It is estimated that the cost of introducing **continuous coverage** for employees who are injured while overseas and are in a declared place or who belong to a declared class of employee, would be in the order of \$2 million p.a.

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6. Department of Education, Employment and Workplace Relations, *Report of the review of self-insurance arrangements under the Comcare scheme*, Commonwealth of Australia, Canberra, January 2009, viewed 8 April 2011, <http://www.deewr.gov.au/WorkplaceRelations/Policies/ComcareReview/Pages/ComcareReviewReport.aspx>
 7. J Gillard (former Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion), *Improvements to the Comcare scheme announced*, media release, 25 September 2009, viewed 8 April 2011, http://www.deewr.gov.au/Ministers/Gillard/Media/Releases/Pages/Article_090925_182334.aspx
 8. Selection of Bills Committee, Report no. 4, 2011, 25 March 2011, viewed 8 April 2011, http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2011/rep0411.pdf
 9. Details of the inquiry, the submissions received and the final report are at the Inquiry website, viewed 9 April 2011, http://www.aph.gov.au/Senate/committee/eet_ctte/oh_s/index.htm

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The remaining amendments are expected to have a nil financial impact.¹⁰

Main issues

Continuous coverage for certain employees while overseas

The amendment to the SRC Act to provide continuous coverage for certain employees whilst overseas was not included in the original Bill. It arises from the introduction of the Australian Civilian Corps Bill 2010 on 29 September 2010.¹¹

The Australia Civilian Corps will comprise civilian experts who can be rapidly deployed to assist in international disaster relief, stabilisation and post conflict reconstruction efforts. When the Bill is enacted

the Australian Civilian Corps will comprise a register of up to 500 civilian specialists in areas such as public administration and finance, law and justice, engineering, health administration and community development. Specialists will be chosen for inclusion on the deployment register based on their expertise and demonstrated experience in relevant areas. It is intended that personnel will be sought from both government and the broader Australian community and will remain in their regular employment until accepting a deployment.¹²

The amendment will allow, amongst other things, for members of a class of employees to be 'declared' for the purposes of determining whether an injury arose out of or in the course of employment. For example, the Australian Civilian Corps may be a declared class of employees. This would ensure that injuries which occur while on deployment will be presumed to be compensable.

Off-site recess injuries

Under the SRC Act, workers' compensation is payable in respect of an injury which arises out of, or in the course of, a person's employment. Coverage for off-site recess break claims was removed from the SRC Act in April 2007 through the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007*. The Explanatory Memorandum for that Act stated:

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10. Explanatory Memorandum, *Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011*, p. ii.
 11. K Ellis (Minister for Employment Participation and Childcare and Minister for the Status of Women), 'Second Reading Speech: Safety Rehabilitation and Compensation and Other Legislation Amendment Bill 2011', House of Representatives, *Debates*, 23 March 2001, p. 8, viewed 11 April 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2011-03-23%2F0033%22>
 12. P Pyburne and E Karlsen, *Australian Civilian Corps Bill 2010*, Bills Digest, no. 35, 2010–11, Parliamentary Library, Canberra, 9 November 2010, p. 4, viewed 9 April 2011, <http://www.aph.gov.au/library/pubs/bd/2010-11/11bd035.pdf>

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The Productivity Commission Inquiry found that the employer's ability to exert control over workplace recess breaks and social activities is a relevant consideration. It recommended that coverage for recess breaks and work-related events be restricted, on the basis of employer control, to those undertaken at workplaces and at employer-sanctioned events.¹³

Despite the recommendation of the Comcare review that claims arising from injuries sustained during off-site recess breaks continue to be excluded, the original Bill and this Bill contain amendments to reinstate workers' compensation coverage for those injuries.¹⁴

As part of its inquiry into the original Bill, the Senate Committee received a submission from the Department of Education, Employment and Workplace Relations which explains the rationale for the inclusion.

The removal of coverage resulted in a number of practical difficulties. One concern was the difficulty in determining what would, and what would not, constitute an off-site recess break where, for example, employees worked off-site or where no facilities were provided for lunch breaks. Another concern was the inconsistency between the fact that an employee would be covered when attending employer-sanctioned courses at educational institutions either within or outside normal working hours but not necessarily during lunch breaks.

... the Government believes the reinstatement of coverage for off-site recess breaks would be reasonable bearing in mind that it will have no net impact on the Budget and only a minimal financial impact on premium payers.¹⁵

The submission by K&S Corporation was 'strongly against' the amendment stating:

Appreciating that the reason for re-instatement of this provision was to re-align the SRC Act with State legislation, the original reason for the exclusion still remains an issue for K&S in that there is a loss of control over what happens to employees (and the activities that they undertake) whilst they are off site having a meal break.¹⁶

Their position is in accordance with the recommendation of the Productivity Commission in 2004, and the Comcare review report.

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13. Explanatory Memorandum, Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006, p. xiii.
 14. Department of Education, Employment and Workplace Relations, *Report of the review of self-insurance arrangements under the Comcare scheme*, op. cit., recommendation 13, p. 7.
 15. Department of Education, Employment and Workplace Relations, *Submission: Inquiry into the Occupational Health and Safety and Other Legislation Amendment Bill 2009*, 29 January 2010, p. 3, viewed 9 April 2011, <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=a047d879-afa8-490c-9769-307f60f4f5c6>
 16. K&S Corporation, *Submission: Inquiry into the Occupational Health and Safety and Other Legislation Amendment Bill 2009*, undated, viewed 9 April 2011, <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=2de24369-5170-416b-9b00-fcb633008296>

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The majority of the Senate Committee acknowledged that the proposed amendment was an important reinstatement of workers' rights on the grounds that 'not all workers have access to on-site recess break facilities, and it is inequitable to deny such workers coverage during their breaks'.¹⁷

Position of Coalition Senators

However, the Coalition Senators took the view that an employer's liability to an employee should continue to be limited to circumstances where the employer has an element of control. It would be unreasonable to make employers liable for all types of injury sustained by their employees independent of the employment relationship. That being the case, the minority recommendation of the Coalition Senators was that off-site recess breaks continue to be excluded from the SRC Act.¹⁸

Payment of medical expenses when compensation is suspended

Currently, section 36 of the SRC Act provides that the right to '**compensation**' under the SRC Act is suspended if an employee refuses or fails without reasonable excuse to undergo a medical examination or to undertake a rehabilitation program. The term '**compensation**' includes medical and related benefits. Whilst suspending weekly compensation benefits can be a useful incentive to encourage claimants to comply with their obligations, there is concern that 'suspending medical payments could be counterproductive to early rehabilitation and return to work'.¹⁹

The majority of the Senate Committee welcomed the amendment on the basis that it will 'promote ongoing medical recovery' of injured workers even in cases where a claimant's weekly benefits are suspended.²⁰

The provisions of this Bill which will allow medical expenses to continue to be paid even though weekly compensation benefits are suspended compare favourably with other jurisdictions, for example in both Queensland²¹ and New South Wales,²² payment of both weekly benefits and medical expenses may cease if compensation is suspended.

17. Education, Employment and Workplace Relations Legislation Committee, *Occupational Health and Safety and Other Legislation Amendment Bill 2009 [Provisions]*, Department of the Senate, Canberra, January 2010, p. 8, viewed 9 April 2011, http://www.aph.gov.au/Senate/committee/eet_ctte/oh_s/report/report.pdf

18. *Ibid.*, p. 18.

19. Department of Education, Employment and Workplace Relations, *Report of the review of self-insurance arrangements under the Comcare scheme*, op. cit., p. 24.

20. Education, Employment and Workplace Relations Legislation Committee, op. cit., p. 9.

21. Section 138 of the *Workers' Compensation and Rehabilitation Act 2003* provides that no compensation is payable during a period of suspension.

22. Section 119 of the *Workplace Injury Management and Workers' Compensation Act 1998* provides that where a worker refuses to undergo an examination or obstructs the examination, the worker's right to recover compensation, or the worker's right to weekly payments, is suspended.

Position of Coalition Senators

The Coalition Senators strongly disagreed with the amendment, expressing their concern that the amendment to the suspension payments provision under the SRC Act 'may facilitate a culture of non-compliance by rewarding employees who do not comply with their obligations'.²³

Time limits for claim determination

Currently, there is no requirement under the SRC Act for workers' compensation claims to be determined within a specified time period. Submissions to the Comcare review raised concerns that the absence of statutory time limits provided scope for considerable delays in determining and reconsidering claims. For example, the Australian Manufacturing Workers Union outlined its serious concern

... that Comcare is not subject to time constraints in decision making in regard to compensation issues. This means that injured employees can and often do wait a very long and unsupported year for a decision to be made in relation to their claim for compensation. When just the first step can take as long as one year, it is clear there are major problems for all employees under Comcare, including those covered by self-insurers and coming from very different state and territory systems.²⁴

The Comcare report noted that claims determined quickly tend to be shorter in duration and less costly.²⁵ It recommended that:

- the Minister agree to the development of statutory time limits for the determination of claims, and
- where the statutory time frames are not met, the claim be provisionally accepted in favour of the claimant, with no requirement for repayment if the claim is subsequently rejected.²⁶

Statutory time limits

The Bill proposes the inclusion of an explicit power in the SRC Act to prescribe time limits by regulation. However, it does not take up the second part of the recommendation that a claim should be provisionally accepted where statutory time frames are not met.

23. Ibid., p. 21.

24. Australian Manufacturing Workers Union, *Submission: Review of self-insurance arrangements under the Comcare scheme*, 29 February 2008, p. 3, viewed 9 April 2011, <http://www.deewr.gov.au/WorkplaceRelations/Policies/ComcareReview/Documents/Submissions/AMWU.pdf>

25. Department of Education, Employment and Workplace Relations, *Report of the review of self-insurance arrangements under the Comcare scheme*, op. cit., p. 23.

26. Ibid., recommendation 10, p. 6,

The Department of Education, Employment and Workplace Relations gave evidence to the Senate Committee that ‘the Government is currently considering the length of the proposed time limits’ for processing workers’ compensation claims and that ... the setting out of the time limits in regulations rather than in the SRC Act ‘will provide the flexibility to modify time limits in the future in response to ongoing improvements in the jurisdiction’s claims determination process’.²⁷

The majority of the Senate Committee supported the intent of the amendment to accelerate rehabilitation and return to work whilst noting that the time taken to determine claims will vary from case to case—and that setting time limits must take this into consideration.²⁸

Position of Coalition Senators

The Coalition Senators similarly supported the setting of time limits for claim determination—but suggested that there be a clear distinction made between the determination of a new injury claim and a new disease claim, recognising that new disease claims are more difficult to assess.²⁹

Provisional acceptance

The question which is unanswered is: what happens if an insurer does not comply with the time frame set out in the regulation? It is a significant problem for an injured worker if his or her claim remains undetermined for a lengthy period. There is evidence that this does occur—although not for the majority of claims. For instance, the submission to the Comcare review by the Communications Electrical Plumbing Union states that ‘in the Union’s long involvement in the Comcare scheme, it can safely state that the usual time frame to resolve a disputed claim is 2 years’.³⁰

The Senate Committee asked the Department of Education Employment and Workplace Relations about the absence of sanctions for failure to meet statutory time frames and was advised that:

there are other levers which will encourage compliance Comcare’s chief executive officer will be accountable for ensuring that Comcare meets its obligations with regard to statutory time limits for processing claims. For those workers compensation claims which are processed by the self-insurers, the SRCC has a tier structure for regulating self-insurers whereby failure to meet their obligations results in stepped-up regulatory requirements. The ultimate sanction against a

27. Education, Employment and Workplace Relations Legislation Committee, op. cit., p. 10.

28. Ibid., p. 11.

29. Ibid., p. 20.

30. Communications Electrical Plumbing Union, *Submission: Review of self-insurance arrangements under the Comcare scheme*, 29 February 2008, p. 18, viewed 9 April 2011, <http://www.deewr.gov.au/WorkplaceRelations/Policies/ComcareReview/Documents/Submissions/CEPUCoalitionSubmissions.pdf>

self-insurer for failure to meet their obligations would be not to renew their licences, which come up for renewal every three years.³¹

Unfortunately, the regulatory framework with its threat of loss of self-insurers licence will not assist those workers who have lodged disputed claims.

The Productivity Commission report of 2004 stated:

The strong correlation between early intervention and successful return to work has prompted two schemes—New South Wales and Western Australia—to allow provisional workers' compensation payments to be made without any admission of liability on the part of the employer.³²

The Productivity Commission recommended early intervention, including 'the early notification of claims and the provisional assignment of liability to facilitate durable return to work'.³³

Unfortunately the background information paper which shaped the Comcare review did not refer to the provisional acceptance of liability on claims and so the submissions to the Comcare review did not focus on this aspect of workers' compensation.

It would appear that this is an option which might be considered in future policy debates about the Comcare system in the context of its return to work outcomes.

Access to the Consolidated Revenue Fund

The SRC Act was drafted with the intention that Comcare would have access to the Consolidated Revenue Fund (CRF) to pay for long-latency disease claims such as asbestosis and mesothelioma from the time of the SRC Act's commencement on 1 December 1988.³⁴ Comcare drew on the CRF until the Federal Court decision of *Etheridge* in 2006, on matters unrelated to funding, indirectly invalidated the CRF arrangements.³⁵

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31. M Baxter (Group Manager, Safety and Entitlements Group, Department of Education, Employment and Workplace Relations), *Occupational Health and Safety and Other Legislation Amendment Bill 2009 [Provisions]*, oral evidence, Senate, *Hansard*, 18 February 2010, p. 2, viewed 9 April 2011, <http://www.aph.gov.au/hansard/senate/commtee/S12795.pdf>
 32. Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks, Final Report*, AGPS, Canberra, 2004, p. 199, viewed 11 April 2011, <http://www.pc.gov.au/projects/inquiry/workerscomp/docs/finalreport>
 33. *Ibid.*, p. 212.
 34. A detailed explanation of the legislative development of Comcare's access to the Consolidated Revenue Fund is contained in Department of Education, Employment and Workplace Relations, *Submission: Inquiry into the Occupational Health and Safety and Other Legislation Amendment Bill 2009*, op. cit., pp. 4–5.
 35. *Comcare v Etheridge* [2006] FCAFC 27 (15 March 2006), (2006) 149 FCR 522, viewed 9 April 2011, <http://www.austlii.edu.au/au/cases/cth/FCAFC/2006/27.html>

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The effect of that decision was that Comcare's access to the CRF to pay for contingent liabilities including those for long-latency disease claims was closed off. Furthermore, the Court's decision meant that Comcare's past drawings from the CRF had always been invalid.

Since 2006, Comcare has had to draw on premium funds, as opposed to the CRF, to pay for long-latency disease liabilities. The Bill proposes to:

- restore Comcare's access to the CRF to pay for those liabilities, and
- set up a mechanism for the recovery and offsetting of those CRF drawings which had been invalidated.

The Senate Committee carefully examined these provisions in the light of comments made by the Senate Standing Committee on the Scrutiny of Bills and further evidence from the Department of Education, Employment and Workplace Relations. The Senate Committee was satisfied with the explanations provided in respect of the proposed amendment.³⁶

Key provisions

Off-site recess breaks

Item 1 of Schedule 2 amends existing paragraph 6(1)(b) of the SRC Act so that an injury to an employee is taken to arise out of, or in the course of, employment if it occurs while the employee is at their place of work for the purposes of that employment, or temporarily absent from his or her place of work during an ordinary recess in that employment.

Importantly, **proposed paragraph 6(1)(b)** must be read subject to other provisions of the SRC Act, namely:

- subsection 6(3) of the SRC Act which provides that an injury to an employee during an ordinary recess is not taken to arise out of, or in the course of, employment if the employee sustained the injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury, and
- existing subsections 14(2) and (3) which provide that compensation is not payable in respect of an injury that is intentionally self-inflicted or which is caused by the serious and wilful misconduct of the employee (unless the injury results in death, or serious and permanent impairment).

36. Education, Employment and Workplace Relations Legislation Committee, op. cit., pp. 12–14.

Continuous coverage for certain employees while overseas

Item 2 of Schedule 2 to the Bill inserts **proposed paragraphs 6(1)(h)** and **(i)** into the SRC Act to create two new circumstances in which an injury to an employee may be treated as having arisen out of, or in the course of, his or her employment.

Proposed paragraph 6(1)(h) relates to employees who are at a place outside Australia and the external territories which has been declared by the Minister to be a place to which the paragraph refers. Injuries sustained by employees at that place are deemed to have arisen out of, or in the course of, their employment.

Similarly, **proposed paragraph 6(1)(i)** allows the Minister to declare certain classes of employees by legislative instrument. Where an employee:

- is at a place outside Australia and the external Territories at the direction or request of the Commonwealth, or a licensee,
- is a member of a declared class of employees and
- suffers an injury

that injury is deemed to have arisen out of, or in the course of, their employment.

Importantly, both of the proposed paragraphs must be read subject to existing subsection 6(3). The presumption is that an injury in either of the circumstances outlined in **proposed paragraphs 6(1)(h)** and **(i)** will not apply if the employee sustained the injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury.

Payment of medical expenses

Where a person sustains an injury arising out of, or in the course of, his or her employment that person is entitled to be paid compensation in accordance with the SRC Act.³⁷ Compensation generally has two components—a weekly benefits payment for loss of wages due to the person's incapacity to work,³⁸ and a payment for hospital, medical and pharmaceutical expenses incurred as a result of the injury.³⁹

Section 36 of the SRC Act provides that an injured worker may be required to be assessed to determine his or her capacity to undertake rehabilitation. Where the injured worker refuses to be assessed, or fails to attend the assessment without 'reasonable excuse', his or her right to compensation is suspended in accordance with subsection 36(4) of the SRC Act. The rationale for such a provision is that it acts as an incentive to claimants to comply with the requirement.

37. Section 14 of the SRC Act.

38. Section 19 of the SRC Act.

39. Section 16 of the SRC Act.

Items 3–5 insert amendments which relate to powers to suspend compensation where an injured worker refuses or fails, without reasonable excuse, to:

- undergo an examination in accordance with a requirement, or in any way obstructs such an examination as required by subsection 36(4)
- undertake a rehabilitation program as required by subsection 37(7) or
- comply with any reasonable requirement of Comcare for the purposes of their claim under subsection 50(5).

In each of those cases, the amendments will limit the suspension of workers' compensation to weekly benefits only. The amendments respond to concerns that the existing powers to suspend medical benefits and weekly payments under the Comcare scheme can, contrary to the purpose of the scheme, undermine efforts towards early rehabilitation and return to work.

Statutory time limits

Existing section 61 of the SRC Act requires that a claimant for compensation be given a written statement setting out the terms under which his or her claim has been accepted or rejected, reasons for that decision, and a statement to the effect that the claimant may, if dissatisfied with the determination, request a reconsideration of the determination under subsection 62(2) of the SRC Act. **Item 6** of Schedule 2 inserts **proposed subsection 61(1A)** which creates an additional requirement that each claim for compensation be considered and determined within the period prescribed by regulations.

Item 7 inserts **proposed subsection 62(6)** which will require that each request for reconsideration of a decision to accept or reject a claim for compensation is considered and determined within the period prescribed by regulations. There is no indication as to the length of the proposed period in the Explanatory Memorandum or the second reading speech. However the Review report proposed that:

Time would start to run from lodgement of a claim with the determining authority, with scope for extension of that time frame to accommodate later lodgement of supporting evidence (say, 20 business days for injuries). A longer time frame (to be determined after consultation) could apply to the determination of disease claims, bearing in mind that these can be more difficult to assess.⁴⁰

The Department of Education, Employment and Workplace Relations explained to the Senate Committee that including the time limits in regulations, rather than in the SRC Act itself, provided 'flexibility to modify time limits in the future in response to ongoing improvements in the jurisdictions' claims determination process'.⁴¹

40. Department of Education, Employment and Workplace Relations, op. cit, p. 22.

41. Education, Employment and Workplace Relations Legislation Committee, op. cit., p. 10.

Access to consolidated revenue fund

Item 8 of Schedule 2 inserts **proposed paragraph 90B(ab)** into the SRC Act. The effect of the new provision will allow Comcare access to the CRF for payment of its liabilities in respect of events which happened before 1 December 1988 but which did not result in an injury, loss or damage until on or after that date. This item is directed towards long latency injuries, for example lung disease or skin disease.

Items 9 and 10 of Schedule 2 are consequential amendments. Together, **items 8–10** operate to restore Comcare's access to the CRF which was closed off in response to comments about the interpretation of section 128 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* which were made by the Full Court of the Federal Court of Australia in the decision of *Etheridge*.⁴²

In addition, the savings provision in **Part 2** of Schedule 2 to the Bill creates the mechanism by which a one-off notional transaction will recover and off set invalid CRF drawings.

42. *Comcare v Etheridge*, op. cit.

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