

Review of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act)

Terms of Reference

Purpose of the review

The nature of work and workplace injuries and illnesses has changed significantly since the introduction of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act), which underpins the Commonwealth workers' compensation scheme, known as the 'Comcare scheme'. The SRC Act has not been reviewed since 2012, and there has been no substantial legislative reform of the scheme since its introduction.

The Comcare scheme was primarily designed to cover Australian Government employees, with relatively consistent employment conditions, engaged in generally similar types of work. The Comcare scheme now covers more private employees (57 per cent) than Government employees, in a wider range of specialist and high-risk industries. In addition, the scheme has seen a significant increase in claims for psychological injuries and illnesses. This review is an opportunity to identify reforms to improve outcomes for injured employees, and to ensure that the scheme has the flexibility to respond to new and emerging workplace practices, while maintaining its ongoing financial viability. The review will make recommendations to the Government to inform future legislative reform of the SRC Act.

The Comcare scheme

The Comcare scheme provides rehabilitation and workers' compensation arrangements to employees of the Commonwealth Government, the ACT Government, and a number of private corporations who self-insure their workers' compensation obligations under the SRC Act.

Comcare acts as scheme administrator, and as an insurer and claims manager for premium-paying scheme employers (the Commonwealth and Commonwealth authorities). The Safety Rehabilitation and Compensation Commission (the Commission) administers some of the regulatory functions of the SRC Act, other than those ascribed to Comcare, and issues and regulates self-insurance licences under the SRC Act.

Review process

The review will be led by an independent panel, appointed by the Minister for Employment and Workplace Relations, and supported by a secretariat team in the Department of Employment and Workplace Relations. The independent panel will draw on research, data, and findings from past reviews, and be supported by specialist advice in areas such as occupational medicine, user-centred design, psychological injury and illness support, and actuarial modelling.

The panel will consult with a tripartite reference group representing unions, employers and Government during the review. The panel will also conduct public consultations and engage with key stakeholders, including people with experience of workers' compensation or personal injury and illness claims, such as injured employees and their unions and legal representatives, as well as advocacy groups, self-insured licensees and their representatives, and Comcare and the Safety, Rehabilitation and Compensation Commission.

Terms of reference

The panel will undertake a comprehensive review of the Comcare workers' compensation framework and make recommendations to Government on improvements to the framework. The recommendations will address how to better support and improve outcomes for employees while ensuring the scheme's future financial viability. The review will consider:

- 1. Best practice in workers' compensation**, including:
 - a. identification of the key objectives for a workers' compensation scheme that supports employees (including through financial and vocational support) to seek treatment, rehabilitate and return to work, and how these outcomes can be achieved through the scheme's legislative framework; and
 - b. how the legislative framework can enable the scheme to respond to current and future workplace challenges, including the rise in reported psychological injuries and illness, an ageing workforce, and changes to working arrangements.
- 2. Employees' experience of the scheme**, including:
 - a. best practice approaches to early intervention, rehabilitation, vocational support, return to work, and supporting employees with psychological injuries and illnesses, and how the scheme framework can reflect these;
 - b. how the legislation can promote a people-centred approach to workers' compensation, which supports employees through their recovery and promotes their wellbeing;
 - c. ensuring that the scheme framework does not negatively impact injured employees' health and wellbeing;
 - d. optimising return to work outcomes;
 - e. how the scheme framework can best support employees with diverse needs and experiences, including consideration of the impact of gender, sexual orientation, and social, racial and ethnic backgrounds; and

- f. how employees with life-altering long-term injuries and illnesses and the families of employees who suffer a serious illness or injury or death, can best be supported under the scheme framework.

3. Scheme coverage, including:

- a. whether national private sector employers should have access to the Comcare scheme;
- b. whether 'non-Commonwealth licensees' should continue to have coverage under the Commonwealth *Work Health and Safety Act 2011* (WHS Act) in light of substantive national harmonisation of work health and safety laws; and
- c. what a place of work is and what constitutes 'employment' for the purpose of workers' compensation, and when an injury or illness should be compensable under workers' compensation.

4. Governance arrangements, including:

- a. best practice governance, regulation and oversight arrangements for the scheme, including regulation and oversight of Comcare, determining authorities, rehabilitation authorities, self-insured licensees, workplace rehabilitation providers and other providers operating in the scheme;
- b. ongoing financial management and viability of the Comcare scheme; and
- c. social partner involvement and tripartism.

5. Scheme entitlements, including:

- a. interactions between workers' compensation payments under the no-fault Comcare scheme and common law and statutory claims and other sources of income or payments, including superannuation, and other compensation schemes;
- b. gaps in coverage that may arise from employees and employers transitioning between Commonwealth and state or territory schemes, employer insolvency, or winding up of a self-insurer;
- c. how entitlements could be structured to better support injured employees and families of employees who suffer injuries and illnesses resulting in deaths, including use of lump sum payments;
- d. use of provisional payments and payment for medical expenses before a claim is accepted;
- e. vocational support and education to support rehabilitation; and
- f. the role of the employer and service providers in rehabilitation and return to work.

6. Resolving disputes in the scheme, including:

- a. how arrangements for internal and administrative review can ensure disputes are resolved as quickly, efficiently and fairly as possible, taking into account the impact of disputes on claimants; and
- b. whether terms in the legislation which have been the subject of significant litigation can be clarified.

7. Scheme administration, including:

- a. delegated claims management;
- b. how to ensure accurate and timely decision-making on claims;
- c. funding arrangements, including powers to set premiums, licence fees and regulatory contributions;
- d. consideration of legislative gaps or unintended consequences arising from the current legislative framework; and
- e. other technical improvements to streamline the regulatory framework of the scheme.

Out of scope

Obligations under the Commonwealth WHS Act are not within the scope of this review. The WHS Act is based on national model legislation. Responsibility for reforms to the national model WHS Act sits with Safe Work Australia and is subject to agreement by relevant Commonwealth, state and territory ministers.

The review will not make recommendations for reform of other Commonwealth workers' compensation schemes such as the military compensation schemes, the Parliamentary Injury Compensation Scheme (PICS), the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005* (ARC Act) and the Seacare scheme. Evidence of the experience of injured employees and their families and of best practice arrangements in these schemes, as well as recent reviews of these schemes, may be considered by the review in making recommendations for reform of the Comcare scheme. The final review report will be available for consideration in any future reform of other Commonwealth schemes.

The review will seek feedback from injured workers and their families within and outside the Comcare scheme to inform recommendations for reform to the legislative framework underpinning the Comcare scheme. However, the review will not make findings in relation to workers' compensation schemes other than the Comcare scheme, or findings in relation to individual claims.

Reporting period

A final report on the review's findings and recommendations will be given to Government for consideration within 12 months of the establishment of the independent review panel.

Information on how to engage with the review can be found on the department's website at: www.dewr.gov.au.