Family and Injured Workers Advisory Committee

FIWAC@dewr.gov.au

Safety, Rehabilitation and Compensation Act Review Panel
C/o SRC Act Review secretariat (srcactreview@dewr.gov.au)

17 April 2025

Dear SRC Act Review Panel

Thank you for the opportunity to provide feedback to the SRC Act Review (the review). We are writing on behalf of the newly established Family and Injured Workers Advisory Committee (the committee). The committee's function is to provide advice to the Commonwealth Minister for Employment and Workplace Relations, and Commonwealth work health and safety regulators, about the needs of people affected by workplace incidents involving death, serious injury or illness.

The committee is in the process of setting its priorities and forward work plan and has a strong interest in the review. All 6 committee members have lived experience of serious workplace incidents, including many with personal experience of the Comcare workers' compensation scheme. Our suggestions include changes to the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) and supporting resources. These are summarised below and listed in **Attachment A**. Some members may make individual submissions to the review to share their own views and experiences.

As a committee, we have a particular interest in improving the scheme by making it more transparent, client-driven, and suitable for modern work. We suggest objectives be introduced to the SRC Act which reflect principles of best practice scheme design, including support for workers with serious injuries and their families.

For example, we would like to see improvements to workers' compensation arrangements for injured workers after the first 45 weeks of incapacity payments. This would help alleviate financial distress and improve the recovery and return to work processes. It is also important to have stronger requirements for employers to meet their obligations in relation to return to work, greater focus on managing psychosocial hazards within the scheme, as well as more agency for workers to return to meaningful work. This could be supported through co-designed and person-centred return to work principles, co-design of return to work plans and stronger enforcement powers for Comcare.

We are interested in more information and workplace support for claimants during the period immediately following a workplace injury or illness. This includes providing workers with more information about the options and supports available to them, to allow them to make informed decisions. Plain language support tools, including advisory services, are critical to help participants navigate the scheme and should reflect that the information needs of participants will change and evolve throughout the claim lifecycle.

We would like to see improvements to the dispute resolution process to ensure the scheme maximises its potential to return injured workers to work or provide the necessary rehabilitation treatment needed in order to achieve a timelier return to work. We would ask the review panel to consider a less formal and compulsory conciliation or mediation in line with other jurisdictions. To streamline that process, the review panel might consider establishing a specialised sub-section of the Administrative Review Tribunal (ART) with strict time-limited regulations to deal with delays and an informal dispute resolution process in its earliest stages where a challenge has been mounted on

a reviewable decision. The worker should also have access to capped cost recoveries for reasonable costs incurred relevant to these early proceedings to support a quick resolution.

Further, the timeliness of claim determinations should also be considered. We would ask the panel to consider a mechanism to fast-track undetermined claims or applications. The delays should then be subject to considerations by an independent mediator.

Specific to workplace deaths, we ask the review panel to consider the modernisation of the entitlements regime for families (dependents) impacted by a death in the workplace. The current regime appears to be well outdated and inadequate to sufficiently respond to situations where a significant source of the family income has been lost.

Finally, we feel compelled to ask the review panel to give careful consideration to the current limitations imposed by the SRC Act in relation to common law rights. While we appreciate that the no fault scheme of workers' compensation plays an important role in alleviating liability from employers, we respectfully submit that those principles are somewhat outdated in 2025. In 2025, workers' compensation and safety obligations are a fact of life in the modern employment landscape. For safety's sake, common law rights should be accessible to seriously injured workers and the families of deceased workers, where a case of negligence, on the balance of probabilities, is capable of being argued. We accept the cost recovery system should be available where entitlements have been paid and that Comcare should stand as a third party to any proceedings to recover costs to the scheme.

We ask that you please remember that you're working with people who have experienced a workplace incident, serious injury, illness, or even the death of a loved one – often during one of the hardest times in their lives. Most of them aren't professionals, just everyday people. The workers compensation system should not be a minefield to navigate. It needs to be clear, user-friendly, and supportive. We must avoid making an already difficult time worse by overcomplicating the process.

Noting that the review is already underway, we request to be closely engaged with the review as it progresses and would appreciate updates on key milestones and draft findings. We invite the panel chair, Justine Ross, to provide updates on the review at a future committee meeting. The committee's secretariat will work closely with the review secretariat to facilitate this.

Thank you for the opportunity to participate in the review and we look forward to receiving updates as the review progresses.

Kind regards

Kay Catanzariti
First Co-Chair

Andrea Madeley
Second Co-Chair

Attachment A

Workplace fatalities and support for families

1. **Increase lump sum compensation - death**: Review and increase of the lump sum payments to dependants and to introduce a payment of lost earnings to better reflect the more national approach and the financial impact of the worker's death on the family. When a young worker is killed there should be more criteria for establishing financial dependence. There have been significant changes in relationships in society in the past 30 years.
2. **Distinguish between economic and non-economic loss for dependents**: Implement a clear distinction between economic losses (e.g., loss of income, financial support) and non-economic loss (e.g., pain and suffering, loss of companionship) in the lump sum compensation for dependants. This would better fall in line with the principles of compensation and damages under the common law and therefore more appropriately separate the losses suffered fairly.
3. **Broaden eligibility criteria for dependents**: Expand the definitions and conditions for dependants to qualify for compensation, ensuring that all those who were financially and emotionally dependent on the deceased worker are covered. This recommendation is supported by recent legislative developments in Victoria, as outlined in the *Workplace Injury and Rehabilitation and Compensation Amendment Bill 2025* and its *Explanatory Memorandum*, specifically Part 3, Division 1, ss 42, 43, 44.
4. **Recognising non-dependent family members**: Introduce provisions to recognise and provide support to immediate family members who were not financially dependent on the worker at the time of death but who have suffered a disruption to their work capacity. This acknowledges the emotional and psychological impact on close immediate family members such as parents, siblings, and other close family members who incur substantial losses themselves following a traumatic family loss.
5. **Access to common law claims for families**: Access to an action in common law for negligence should be made available where a worker sustains a serious injury or dies as a result of unsafe work conditions. This is particularly important when the safety regulator, for whatever reason, declines to prosecute under the *Work, Health and Safety Act 2011* (Cth). We note the legislation as it currently stands, creates impenetrable barriers for families to undertake any civil prosecution due to the cap on damages and the requirement to elect a claim under the SRC Act or common law. A fair path to common law rights where negligence can be established, forms the cornerstone of our justice system and the rule of law. Currently, the SRC Act places the Commonwealth Government in a position that is neither impartial nor fair. For safety's sake, there should be full access where there is adequate legal standing to run a common law action against a negligent employer. To avoid double dipping, the SRC Act review could consider a recovery action as a party to those proceedings.
6. **Adjust funeral expense cap**: Increase the cap on funeral expenses to ensure it adequately covers the actual costs incurred by the family. Consideration must be given to cultural funerals which reflect the diverse range of traditions and beliefs held by different communities in Australia. Also, if a death occurs in a different jurisdiction, you may have additional transport costs.
7. **Grief counselling services:** Providing counselling services for the immediate family, including the parents and siblings of a deceased worker. Consideration should be given to regional families who are required to travel for in-person sessions, as face-to-face support is often far more beneficial than Telehealth in these cases. It is essential that the counsellor involved is a specialist in dealing with sudden trauma.
8. **Crisis benefits:** Crisis payments of $20,000 should be provided to the family within one week of a worker's death. This immediate payment acknowledges the financial hardship

many families face following a sudden loss—particularly as it can take many months to receive workers' compensation. Many families live pay check to pay check, with ongoing expenses such as rent or mortgage payments. In some cases, families have lost their homes or been forced to couch surf due to delays in financial support. This benefit is designed to ease the immediate financial burden and can be used at the family's discretion for essential needs. The purpose of the crisis benefit is to provide timely, flexible support during one of the most challenging periods a family can face. Examples include:

- School fees or extracurricular activities (e.g. swimming lessons)
- Transport costs such as taxis, when a parent is not in the right mental space to drive
- Utility bills and groceries
- Lawn care or house cleaning services
- Travel and accommodation for family members, particularly when the death occurs in a different jurisdiction
- Costs associated with attending court proceedings

9. **Portal or online application:** Introduce a portal or online application to help families navigate the workers' compensation system. It would provide information on services that help support them, it would be a place where you ask questions and receive updates from their case manager and transparency. It would also have different languages for our multicultural workforce.

<u>Amendments to existing provisions</u>

1. **Amendments to section 19:** (2A) Where an employee has been medically certified as having a capacity for suitable employment, but the employer has not provided or facilitated such duties in accordance with Section 40, the employee shall remain entitled to compensation calculated at 100% of their Normal Weekly Earnings beyond the 45-week threshold, until such suitable duties are made available. Note: Subsection 19(2A) should be read in conjunction with Section 40, which outlines the employer's duty to take all reasonable steps to provide suitable employment to an employee undertaking or having completed a rehabilitation program. Failure to meet these obligations directly affects the employee's ability to return to work and should not result in a reduction in compensation payments.
2. **Amendments to section 36:** "(5A) Where a treating medical practitioner has certified the employee's capacity for work, the employer or rehabilitation authority must not disregard or override this certification without documented and evidence-based justification, consistent with best practice medical guidelines."
3. **Amendments to section 37:** Amend: "**may** make a determination…" in subsection (1) to "**must** make a determination…" where a worker has a certified incapacity for work exceeding a set number of weeks (e.g. 7–14 days)." "(1A) A rehabilitation authority **must**, without unreasonable delay, initiate and coordinate a rehabilitation program for any employee with an accepted claim involving incapacity for work, where the treating medical practitioner has recommended such a program." "(1B) Failure to comply with subsection (1A) may constitute a breach of statutory duty."
4. **Amendments to section 40:** "(1A) The relevant employer must, within a reasonable timeframe and no later than 28 days of being notified of an employee's partial capacity, take all reasonable steps to identify, offer, and support suitable employment aligned with the employee's certified medical capacity."

<u>New sections to be added to the Act</u>

New section establishing penalties or consequences for non-compliance with rehabilitation duties.

To strengthen accountability under the SRC Act), it is proposed that a new **Section 40A** be inserted to establish a clear **compliance and enforcement framework** for employer obligations under Sections 36 to 40. This section should empower Comcare and the Safety, Rehabilitation and Compensation Commission (SRCC) to investigate, monitor, and enforce employer responsibilities where suitable duties or rehabilitation programs are not initiated, coordinated, or facilitated in a timely and reasonable manner. In addition to compliance notices and financial penalties for breach, the section should allow for systemic issues to be addressed through independent oversight, public reporting, and compensation redress mechanisms. Affected employees must also be entitled to remedies including back pay, leave re-crediting, and non-economic compensation where psychological or financial harm has resulted. These provisions will ensure that employer inaction or disregard for medical recommendations does not go unchecked and that the integrity of rehabilitation processes under the Act is preserved.

Section 40A: '*Compliance with Duty to Provide Suitable Employment and Rehabilitation*'

(1) The relevant authority must ensure that reasonable steps have been taken to offer suitable employment in accordance with Section 40.

(2) Where suitable employment has not been provided within a reasonable period, and the employee remains capable of performing suitable duties as certified by a treating medical practitioner, the employer must provide written justification outlining:

(a) the barriers to providing suitable duties,
(b) what steps are being taken to resolve them, and
(c) the anticipated time frame for duties to be offered.

(3) Where an employer fails to comply with subsections (1) or (2), the employee's weekly incapacity compensation shall continue at **100% of the Normal Weekly Earnings**, regardless of the 45-week limitation in Section 19(2).

(4) The failure of the employer to take reasonable steps under this section may be subject to investigation by the Safety, Rehabilitation and Compensation Commission (SRCC) and penalties as prescribed by regulation.

(5) Where a relevant authority or employer fails to initiate, coordinate, or provide suitable rehabilitation programs in accordance with Sections 36–40, the authority may be subject to investigation and compliance action by Comcare or another prescribed regulator.

(6) The injured worker may lodge a complaint with Comcare where rehabilitation is delayed, denied, or disregarded contrary to medical advice or in breach of the employer's statutory obligations.

(7) Where a relevant authority or employer fails without reasonable excuse to comply with the obligations under Sections 36 to 40, including the timely facilitation of suitable duties or rehabilitation programs:

(a) the matter may be referred to the Safety, Rehabilitation and Compensation Commission (SRCC) for investigation; and

(b) the employer may be issued a compliance notice, requiring immediate rectification of the breach within a prescribed timeframe.

(8) If a compliance notice is ignored or the breach is repeated:
(a) the employer may be subject to financial penalties, calculated as a percentage of the total compensation payable to the affected employee(s) during the breach period; and
(b) the breach will be recorded and may be considered in future licensing reviews or audits conducted by Comcare or the SRCC.

(9) Where systemic or wilful non-compliance is found:
(a) the SRCC may recommend independent oversight of the employer's rehabilitation practices;
(b) the employer may be required to publicly report on corrective actions taken; and
(c) affected employees may be entitled to compensation uplifts or additional entitlements, determined by the Commission or a court.

(10) The failure to provide suitable duties or implement a rehabilitation plan that results in financial loss or psychological harm to an employee may give rise to a claim for maladministration, entitling the worker to:
(a) formal apology and redress;
(b) reimbursement of all lost wages, leave, and entitlements; and
(c) additional non-economic loss compensation, subject to determination.

New section adding to existing section 36.

A new section 36(1B) should tighten the loophole that employers use when it comes to returning people to work and their pre-injury roles. "Suitable employment" is loose and does not take into account the employee's career qualifications, skills or level of experience they have accrued throughout their career. This will hopefully assist those employees with an opportunity to keep a level of person-centred rehabilitation power.

Proposed Section 36(1B): Clarifying Suitable Employment

36(1B) For the purposes of this section, "suitable employment" must:
(a) be consistent with the employee's certified work capacity, and
(b) take into account the employee's pre-injury qualifications, skills, and professional experience, and
(c) be of a nature and status that supports rehabilitation and career reintegration, and
(d) not be demeaning, tokenistic, or intentionally misaligned with the worker's professional expertise for the purpose of constructive dismissal or coercion.

36(1C) An employer shall not assign duties that, while technically within capacity, are demonstrably irrelevant to the employee's occupational background or which constitute a regression from their substantive role unless explicitly justified by medical necessity or agreed upon in writing by the employee and treating practitioner.