



Australian Government

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INQUIRY INTO THE SOCIAL SECURITY AMENDMENT (SUPPORTING AUSTRALIAN VICTIMS OF TERRORISM OVERSEAS) BILL 2011 AND THE ASSISTING VICTIMS OF OVERSEAS TERRORISM BILL 2012

SUBMISSION TO THE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

BY COMCARE
13 APRIL 2012

THE COMCARE SCHEME

Comcare contributes to a safer, fairer, more productive and socially inclusive Australia. The Comcare scheme is a national, integrated work health and safety, rehabilitation and compensation system.

Comcare is established under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) and has a number of powers and functions that ensure injured workers have access to compensation and can return to work quickly and safely.

Comcare administers the Commonwealth workers' compensation scheme for all workers employed by Australian Public Service (APS) agencies and the ACT Government. Self-insurers—licensed by the Safety, Rehabilitation and Compensation Commission (SRCC)—provide the same safety, rehabilitation and compensation services to their workers under the SRC Act. There are currently 30 licensed self-insurers, with most being significant employers in sectors such as banking, construction, transport and telecommunications.

COMCARE'S SUBMISSION

The purpose of Comcare's submission is to clarify the interaction of the Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill 2011, the Assisting Victims of Overseas Terrorism Bill 2012, and the SRC Act.

OVERLAPS BETWEEN THE SRC ACT AND VICTIMS OF TERRORISM LEGISLATION

When a person who becomes eligible for an Australian Victim of Terrorism Overseas Payment (AVTOP) fits within the following criteria, it is likely they will also qualify for workers' compensation benefits under the SRC Act:

1. They were an employee of an APS agency, the ACT Government, or a licensed self-insurer.
2. They were present at the overseas location at the direction or request of their employer where the terrorist incident occurred.
3. At the time they were involved in or affected by the terrorist incident, they were either acting in the usual course of their employment, or were covered by an extended coverage declaration of the Minister under sections 6(1)(h) or (i) of the SRC Act.

Extended coverage provisions commenced on 7 December 2011 following amendments to the SRC Act made by the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2011*, and following the introduction of the Victims of Terrorism legislation to Parliament.

These amendments provide extended workers' compensation coverage for employees who sustain an injury while overseas at the direction or request of the Commonwealth or a licensee in circumstances where the Minister has declared that either the place or the class of employees falls within section 6 of the SRC Act.

The insertion of sections 6(1)(h) and 6(1)(i) in the SRC Act provides 24 hour coverage if an employee is at a declared place, or falls within a declared class of employee. In either of those circumstances, injuries—including injuries occurring outside normal working hours—are compensable, subject to existing legislative exclusions. So long as an employee covered by section 6(1)(h) or (i) is doing something that is reasonable in the circumstances of the overseas posting, he or she will be covered for compensation purposes.

Only the Minister may declare that section 6 applies to an overseas place or to a class of employees. Such declarations must be made by legislative instrument under sections 6(1)(h) and 6(1)(i) (respectively) of the SRC Act. They are not declarations made under section 5(6) of the SRC Act.

The Minister has not yet made any declarations about places under section 6(1)(h) of the SRC Act. As stated in the second reading speech, it is anticipated that such declarations will be limited to areas which are significantly dangerous and have a high risk of injury. Presumably, this will include locations with a higher risk of terrorist activity - although it is also possible for terrorist incidents to occur in areas not normally considered 'high risk'.

From 22 December 2011, the Australian Civilian Corps under the *Australian Civilian Corps Act 2011* are a declared class of employees under paragraph 6(1)(i) of the SRC Act.

Comcare's understanding of the interaction of the SRC Act and the proposed Victims of Terrorism legislation is that, in many cases, Comcare scheme employees overseas who are involved in a terrorist incident and thus eligible for an AVTOP will also be eligible for workers' compensation benefits.

In addition, the Victims of Terrorism legislation provides for possible payments to close family members of persons killed in terrorist incidents. In some instances these family members will also be eligible for a death lump sum payment under the SRC Act. However, given that the criteria for such payments are different under the two schemes, instances of 'double dipping' compensation may actually be limited.

PAYMENTS TO FAMILY MEMBERS

In the event of the death of a Comcare-scheme employee, specified dependants can be eligible for a lump sum payment of \$458 980.51 and funeral benefits of \$10 412.50 (rates current as at 1 July 2011). The test for eligibility for these payments is that the claimant must have been wholly or partly **economically dependant** on the deceased worker and fall within one of the categories of dependant listed in section 4 of the SRC Act - a spouse, parent or step-parent, father or mother-in-law, grandparent, child or stepchild, grandchild, sibling or half-sibling.

The list of persons considered 'close family members' under the Victims of Terrorism legislation includes a deceased victim's partner, child, parent, sibling or legal guardian. This is a more limited list than the SRC Act, however no economic dependency test applies under this legislation.

In cases where there is likely to be an overlap (for example, a child under 18 of an APS employee who is killed in an overseas terrorist incident), the maximum AVTOP of \$75 000, while significant, would represent less than a further 20 per cent above the maximum lump sum payable under the SRC Act.

Where there are multiple economic dependants under the SRC Act (for example, a spouse and several children), the maximum amount of \$458 980.51 is apportioned between the dependants. In this situation, an additional AVTOP payment would represent a significant additional amount payable to the dependants.

SUMMARY

The broader policy intent of the SRC Act is that statutory workers' compensation benefits should be an exclusive form of benefit or compensation for injured workers.

Section 48 of the SRC Act provides that workers' compensation is not payable where an injured worker recovers damages for an injury where compensation would otherwise be payable under the SRC Act. The Victims of Terrorism Bill will amend section 48(9) of the SRC Act to provide that 'damages' does not include an AVTOP payment.

Generally, injured workers lose rights to common law damages against their employers, and must also repay workers' compensation benefits (or have those benefits offset) where there has been damages or compensation from another source (for example, from a claim against a third party). However, Comcare notes the second reading speech of Mr Robert McClelland MP for the Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill 2011 indicates that the intention is not for the AVTOP legislation to bar 'double-dipping' where an overseas terrorist incident occurs.

Comcare notes that guidelines to support the Victims of Terrorism legislation will be prepared. These will direct decision-makers to consider whether the victim (or close family members) may also be entitled to other payments such as workers' compensation or death lump sums. This will ensure those who are entitled to payments under multiple schemes receive an appropriate overall amount.