



Electrical Trades Union of Australia

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SUBMISSION

Senate Education and Employment Committee

*Safety, Rehabilitation and Compensation Legislation
Amendment (Exit Arrangements) Bill 2015*

10 April 2015



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The Electrical Trades Union (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents approximately 65,000 workers electrical and electronics workers across the country and the CEPU as a whole represents approximately 100 000 workers nationally, making us one of the largest trade unions in Australia.

The Electrical Trades Union of Australia welcomes the opportunity to submit to the Senate Education and Employment Committee in relation to the *Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015*.

The *Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015* (the Bill) will amend the *Safety, Rehabilitation and Compensation Act 1988* (the Act) to provide for financial and other arrangements for a Commonwealth authority to exit the Comcare scheme which is created by the Act which prescribes the work health and safety requirements for employers and employees covered by the Act.

The Bill's explanatory notes state the framework established by these amendments will:

- enable Comcare to determine and collect 'exit contributions' from former Commonwealth authorities and successors of former Commonwealth authorities. This will ensure that an exiting employer does not leave the Comcare scheme without contributing an appropriate amount to cover any current or prospective liabilities that are not funded by premiums the employer has paid before exit



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- ensure that employees injured before the employer's exit continue to be supported by an appropriate rehabilitation authority
- enable Comcare to determine and collect ongoing regulatory contributions from exited employers or successor bodies.

The necessity for the Bill arose out of the Australian Capital Territory (ACT) Government announcement¹ that it is exiting the Comcare scheme and designing its own workers' compensation scheme aimed at providing improved outcomes for injured ACT public sector employees.

We support the ACT Government moves to exit the Comcare scheme.

ACT Workplace Safety and Industrial Relations Minister is on the public record² saying that Comcare hasn't been delivering the results satisfactory to the ACT Government and that the promotion of employees' recovery and return to work by providing early rehabilitation services focused on achieving specific health return-to-work outcomes and that hasn't been happening under Comcare and that cost associated with Comcare have continued to escalate with the ACT premiums currently at approximately \$100 million per annum³. The Minister stated that *'the cost*

¹http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/gentleman/2015/discussions-commence-on-designing-a-new-workers-compensation-scheme-for-act-public-servants

² <http://www.abc.net.au/news/2015-02-26/act-government-wants-to-exit-comcare-scheme-to-save-money/6263098>

³ <http://www.canberratimes.com.au/national/public-service/act-dumps-comcare-20150225-13o86a.html>



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has doubled in the last five years and that hasn't translated to better outcomes for workers. This is the key issue I think."⁴

The ACT Government's move to exit Comcare has won the support of the ACT Law society⁵.

In our view it is of little surprise that the ACT Government has taken the decision to exit the Comcare scheme and set up it's own because Comcare is an inferior system to state based workers compensation schemes.

The Electrical Trades Union commissioned the McKell Institute to provide an independent, evidence-based foundation for the parliamentary debate into the future of Australia's workers' compensation system. The resultant report⁶, "*Designing a Best Practice National Workers' Compensation Scheme*", was written by an independent legal expert who examined the likely impacts of the *Safety, Rehabilitation and Compensation Bill 2014* (SRC Bill) which is also currently before the Senate and is relevant to the Committee's consideration of the Bill.

The report author, Dr Joanna Howe, is a Rhodes Scholar, a senior lecturer of law at the University of Adelaide, former consultant to the International Labour Organisation in Geneva, and consultant with Harmers Workplace Lawyers.

Comcare provides the least entitlements, has the least effective regulator, and the lengthiest dispute resolution process of all the workers' compensation jurisdictions in Australia.

⁴ <http://www.abc.net.au/news/2015-02-26/act-government-wants-to-exit-comcare-scheme-to-save-money/6263098>

⁵ <http://www.actlawsociety.asn.au/news-media/media-releases-2015>

⁶ <http://mckellinstitute.org.au/reports-research-outside-studies-and-calls-for-submission>



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- Comcare inspectors lack specialist training - The Taylor Fry report into Comcare found that Comcare's training of inspectors tended to be narrower than the specialised, in-house training occurring within state and territory regulators.
- Comcare does not have developed industry-specific codes to cover self-insurers in hazardous industries such as construction and road transport. Comcare also lacks specialist regulators for the mining, petroleum, gas and explosive industries.
- Comcare inspectors are less able to respond to regional crises - Comcare inspectors are not organised in industry teams and regional teams. They are organised in capital cities and have less capacity to monitor geographically disparate areas.
- Comcare inspectors have been found to be less rigorous in investigating procedures - the Taylor Fry report found that Comcare inspectors were less rigorous in their investigations. Comcare's enforcement activity tend to be highly focus on delivering workshops and presentations which are a far less effective method in securing compliance with WHS laws. 21% of Comcare's total enforcement activity is dedicated to delivering workshops and presentations whereas this figure is 0.4%, 4.7% and 1.1% for NSW, Queensland and WA respectively.



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- Comcare has historically low rates of prosecution vs. existing state schemes - Comcare has historically initiated low rates of prosecutions and Comcare inspectors issue far fewer improvement notices and prohibition notices.

Number of legal proceedings finalised in 2012-2013⁶¹

NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS GOV (COMCARE)
80	91	98	28	26	8	1	3	2

Number of notices awarded as a % of number of employees in the scheme in 2012-2013⁶⁴

NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS GOV (COMCARE)
0.2%	0.63%	0.3%	1.1%	0.4%	0.1%	0.2%	0.5%	0.01%

- Comcare has historically processed claims at an unacceptably slow rate - in 2011-12, 51.6% of injured workers covered by Comcare did not have their claims resolved within 9 months. This is compared with 4.9% in NSW, 12.3% in Victoria and 4.7% in QLD.

Given it is clearly demonstrable that Comcare is an inferior, more expensive workers compensation scheme to the vast majority of state based schemes, it is of little surprise that the ACT Government has taken steps to exit Comcare and there is the potential that other states will follow, particularly when the effect of the SRC Bil will only lead to reduced premium pools for the businesses left in state schemes and greater costs for the states.

Unless action is taken by the Government to improve Comcare by providing it with adequate resources and appropriately skilled staff, other states may follow the ACTs lead and exit in the future.