

## Senate Standing Committee on Education and Employment Legislation

### Inquiry into the Safety, Rehabilitation and Compensation Legislation Amendment (Improving the Comcare Scheme) Bill 2015

#### Submission of Comcare

## Introduction

This is Comcare's submission to the Senate Education and Employment Legislation Committee inquiry into the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (the Bill).

## Purpose of the submission

This submission focuses on the objectives of the Bill aimed at supporting employees who are injured at work participate actively in their injury management and rehabilitation, and where they are able to do so, seek and engage in suitable employment.

## The Comcare scheme

The Comcare scheme (the scheme) provides an integrated safety, rehabilitation and compensation system, no matter what Australian state or territory an employer operates in or where its employees are located.

Comcare's work is derived from four Commonwealth statutes described in **Attachment 1**.

*The Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) provides for rehabilitation and compensation to employees covered by the scheme for work related injury. The following employees are covered (as at 1 January 2015):

- Commonwealth and Australian Capital Territory (ACT) public servants
- Employees of Commonwealth and ACT statutory authorities and corporations
- Employees of corporations who have a licence to self-insure under the SRC Act.

The SRC Act also applies to members of the Defence Force injured during non-operational service before 1 July 2004. Schedule 16 of the Bill amends the SRC Act to ensure that the amendments made to the SRC Act, with minor exceptions, do not apply to defence-related claims.

## Comcare functions

Comcare's functions<sup>1</sup> under the SRC Act include:

- to make determinations accurately and quickly in relation to claims and requests to Comcare under this Act;
- to minimise the duration and severity of injuries to its employees and employees of exempt authorities by arranging quickly for the rehabilitation of those employees under the Act;
- to co-operate with other bodies or persons with the aim of reducing the incidence of injury to employees;

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<sup>1</sup> Refer section 69 of the SRC Act.

- to conduct and promote research into the rehabilitation of employees and the incidence and prevention of injury to employees;
- to promote the adoption in Australia and elsewhere of effective strategies and procedures for the rehabilitation of injured workers; and
- to publish material relating to the rehabilitation of employees under this Act.

Comcare has a long history of claims management and working with employers and employees to access compensation benefits where appropriate and achieve return to work outcomes. In addition, Comcare has used its research, promotion and publication functions to test the performance of its approaches and monitor trends in other jurisdictions and internationally.

### **Better practice claims management**

Better practice claims management involves actively managing the claim to enhance return to work and recovery outcomes. Active management of claims will be enhanced by scheme parameters which clearly define the roles and responsibilities of all parties and which promotes early intervention and mitigate risks of longer term incapacity.

The Bill provisions will better support relevant authorities to implement better practice claims management in order to achieve the above objectives. It does this by:

- requiring the early notification of injury;
- imposing clear rehabilitation roles and responsibilities on employers and employees;
- imposing obligations relating to assisting employees find and maintain suitable employment; and
- the introduction of work readiness assessment to assist in identifying suitable employment options.

If someone is ill or injured, getting the right treatment is important but health care alone has little impact on work participation outcomes.<sup>2</sup> Central to achieving improved return to work outcomes under the Comcare Scheme are those amendments that strengthen the rehabilitation and return to work requirements in the SRC Act and emphasise the vocational nature of rehabilitation services.

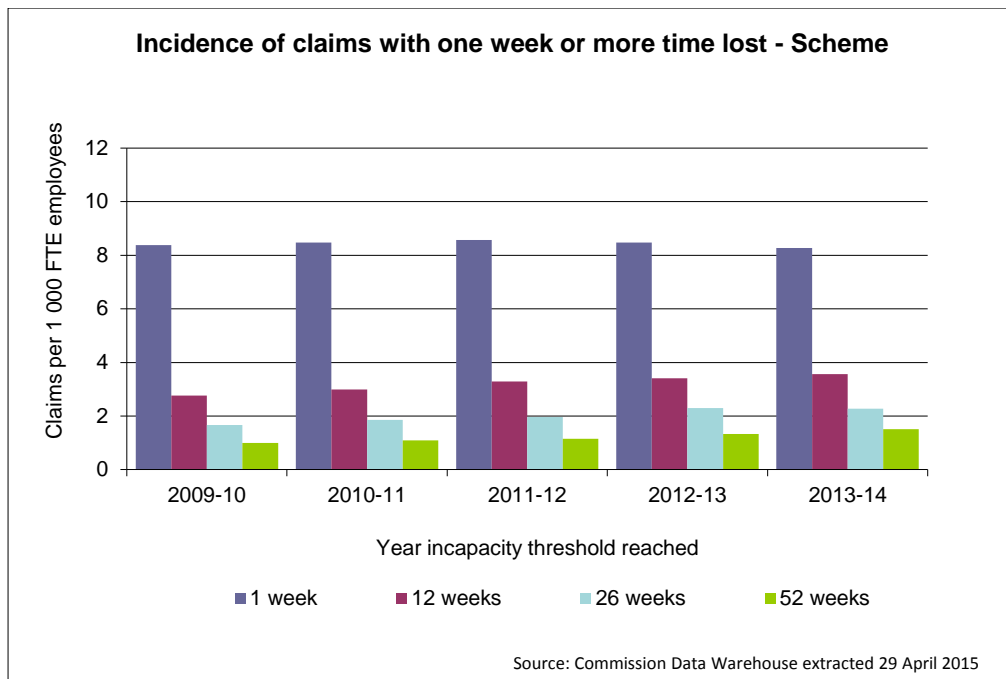
The legislative changes are complementary to Comcare's efforts<sup>3</sup> (as a relevant authority in the Scheme) to actively manage claims in conjunction with rehabilitation and return to work support provided by the employer.

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<sup>2</sup> Bandura, A (1997) Self –Efficacy: The Exercise of Control. New York: W.H. Freeman & Company. Fear, W J (2007) Return to work revisited. *The Psychologist*, 22, (6), 502-503.

<sup>3</sup> Comcare is currently implementing an active claims management model in its Claims and Liability Management Division to improve return to work outcomes and reduce time taken off work.

## Incidence of claims with one week or more time lost



As shown in the above table, the proportion of injured employees receiving compensation benefits at 12, 26 and 52 weeks have been increasing.

The amendments contained in schedule 2 of the Bill will create an improved regulatory environment and assist improved return to work outcomes employees who are off work longer and are more likely to develop long-term incapacity if no effective intervention is made.

## Research

Comcare has access to the latest thinking on return to work and how a quicker return to work can assist both the employee and the workplace, as well as reduce the economic and human costs associated with work place harm.

The Bill supports the key insights derived through Comcare's research.

## Early Intervention

Early intervention programs have been found to have a positive effect not only in terms of improving employee outcomes (recovery), but also in terms of their capacity to remain at work, reducing the length of time they are away from work, reducing the likelihood of further sickness absences, and ultimately, improving their longer term perceptions of the workplace. Similarly, workplaces using early intervention programs have found that they

reduced the number of days employees are absent from work, their costs, and the amount of lost productivity.<sup>4</sup>

### **Case study**

Comcare and the Department of Defence collaboratively developed an administrative framework to provide early response to injury, to prevent long-term absence from the workplace and reduce the development of chronic illness.

A review of Defence's claims management outcomes over the last three years suggests that the strategy has been effective through a significant reduction in the number of accepted claims, cost of claims and duration of incapacity.

The Bill provides clear roles and obligations which will help all Comcare scheme employers and Comcare share responsibility to reduce the human and financial impact of workplace harm.

The Bill provisions relating to rehabilitation are aimed at assisting in improving the time taken by an employer in notifying Comcare of a claim, thereby providing greater opportunity to ensure employees with these injuries are getting the support they need as early as possible. The amendments will also enable the early provision of medical treatment to employees in order to minimise unnecessary disability.

### **The health benefits of work**

There is compelling international and Australasian evidence that work is generally good for health and wellbeing, and that long-term absence, disability and unemployment generally have a negative impact on health and wellbeing.<sup>5,6</sup>

Australian medical experts are clear and united in their support, led by The Royal Australasian College of Physicians (RACP) and the Royal Australian College of General Practitioners (RACGP). The RACP released a [Consensus Statement on the Health Benefits of Work](#) in March 2011. It outlines the positive relationship between health and work and the negative consequences of long term work absence and unemployment. Comcare joined almost 100 signatories, including business groups and accident compensation agencies, in endorsing its application and acknowledged their role in promoting the health benefits of work.

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<sup>4</sup> Comcare Early Intervention Report of October 2014:  
([http://www.comcare.gov.au/promoting/research\\_and\\_case\\_studies/early\\_intervention](http://www.comcare.gov.au/promoting/research_and_case_studies/early_intervention))

<sup>5</sup> Marmot, M 2005, 'Social determinants of health inequalities', *The Lancet*, vol.365, pp.1099-104.

<sup>6</sup> Waddell, G and Burton A.K 2006, *Is work good for your health and wellbeing?*, London, UK: The Stationery Office.

There is a vast body of evidence that people with mental ill health are one of the highest risk groups when it comes to long term sickness.<sup>7</sup> A good job contributes to good mental health<sup>8,9</sup> and long absences from work increase the risk of permanent work disability<sup>10</sup>.

For these reasons Comcare places a genuine priority on prevention and early intervention activities.

### Case example

*"In my case, I'm not in the least bit afraid to talk about my recovery from depression, because I'm extremely proud of the progress that I've made, and that I've been able to get back into the workplace against fairly significant odds. It was always my goal to get back to work. I felt, and still feel, I've got probably 10 good years at least left to me in the work place"*

The Bill, if enacted, will encourage employees to participate actively in their injury management, and where they are able to do so seek, engage and remain in suitable employment. By providing clear roles and responsibilities on all key participants in the rehabilitation and return to work process, the Bill will enable employers, their employees and the relevant authority to work more closely together to identify employment opportunities to improve outcomes for employees.

The Bill also provides Comcare with the ability to arrange work place rehabilitation for an employee, which is important in circumstances where the employee is no longer employed by that employer and they are unable to provide workplace rehabilitation for the employee, or where an employee has a capacity to work but refuses to do so.

### Case example

At the time of injury the employee was employed by an employer who was an employer under the Comcare scheme. The employer's attempts to rehabilitate the employee to his pre-injury position were successful to a degree. However with a worsening of the employee's medical condition it became apparent that the employee was not able to sustain this return to work. During this time the injured employee's employer left the Comcare scheme.

<sup>7</sup> Organisation for Economic Co-operation and Development 2012, *Sick on the Job? Myths and Realities about Mental Health and Work*, Paris: OECD Publishing.

<sup>8</sup> Thomas C, Benzeval M and S.A Stansfeld 2005, 'Employment transitions and mental health: an analysis from the British household panel survey', *Journal of Epidemiology and Community Health*, vol.59, pp.243-249.

<sup>9</sup> Karsten I.P and K Moser 2009, 'Unemployment impairs mental health: Meta-analyses', *Journal of Vocational Behavior*, vol.74, pp.264-282.

<sup>10</sup> Kivimaki, M, Forma, P, Wikstrom, J, Halmeenmaki, T, Pentti, J, Elovainio, M and J Vahtera 2004, 'Sickness absence as a risk marker of future disability pension: the 10-town study', *Journal of Epidemiology and Community Health*, vol.58, pp.710-711.

This left the employee with no rehabilitation authority, which had the potential to increase the length of time where the employee was not working.

While Comcare put in place administrative arrangements to provide the injured employee with advice and support the Bill will provide Comcare with the ability under the SRC Act to arrange workplace rehabilitation, to assist employees seek, find and maintain suitable employment.

The Bill provides relevant authorities with the ability to arrange work readiness assessments, and employers with greater incentives to provide alternative work or reduced hours of work to employees, which is important in circumstance where an employee is no longer able to work in their pre-injury employment but has a capacity to work.

### **Case example**

At the time of the injury the employee was employed by the Australian Public Service (APS). Medical evidence certified the employee unfit for work in the APS and fit to undertake a work trial outside of the APS.

For this claim suitable employment under the SRC Act is defined as APS employment only. If the employee refuses to seek or undertake employment outside of the APS they will continue to be entitled to weekly incapacity payments, even though they have a capacity to work elsewhere.

The Bill will expand the definition of suitable employment to include any employment and provide greater opportunity for employers to support employees find, seek and maintain suitable employment in all employment sectors.

### **Conclusion**

Comcare believes that the provisions of the Bill are in line with current research and evidence on rehabilitation and return to work and will greatly assist all scheme participants in improving scheme outcomes, especially as they relate to effective medical treatment, rehabilitation and earlier return to work.

## ATTACHMENT 1

<b>Work Health and Safety Act, 2011 (WHS Act)</b>	Implements, in the federal jurisdiction, model work health and safety arrangements agreed by Australian Governments. The WHS Act calls out Comcare as the federal work health and safety regulator and describes its related functions and powers. The WHS Act also allocates oversight and consultation functions to the Safety, Rehabilitation and Compensation Commission (SRCC).
<b>Safety, Rehabilitation and Compensation Act, 1988 (SRC Act)</b>	Establishes Comcare as a statutory agency and describes a range of functions and powers related to the regulation of workers' compensation and the claims management of workers' compensation liabilities. It also establishes the SRCC and describes its functions and powers. It calls out the SRCC as the regulator of certain national companies approved by the Minister to be licenced for self-insurance of their workers' compensation liabilities. The SRC Act divides and allocates regulatory responsibility for workers' compensation arrangements to each of Comcare and the SRCC and in some cases, jointly (in that sense they co-regulate). The SRC Act requires Comcare to provide staff and funding for the SRCC's work.
<b>Asbestos-related Claims (Management of Commonwealth Liabilities) Act, 2005 (ARC Act)</b>	Provides for Comcare to assume and manage the common law liabilities of the Australian Government and, with certain exceptions, its agencies and controlled companies, for asbestos-related conditions claims made by certain Australian workers.
<b>Seacare legislation</b>	A series of five related pieces of federal law create the scheme of work health and safety, rehabilitation and workers' compensation arrangements that apply to certain Australian seafarers and establish the Seacare Authority and its functions. The scheme is Australia's only example of an industry-based scheme. Its workers' compensation arrangements are modelled on the SRC Act. The SRC Act requires Comcare to provide the secretariat for Seacare Authority.