



**Senate Education and Employment
Legislation Committee**

**Inquiry into the Safety, Rehabilitation
and Compensation Amendment
(Improving the Comcare Scheme)**

Bill 2015

Prepared by: Suresh Manickam

Date: 24th April, 2015

NATIONAL OFFICE

Level 4,
30 Atchison Street,
St Leonards NSW 2065
Locked Bag 1818,
St Leonards NSW 1590

T +61 2 9439 8523
F +61 2 9439 8525
E necanat@neca.asn.au
W www.neca.asn.au
ABN 78 319 016 742

Senator Bridget McKenzie
Chair of the Senate Education and Employment Legislation Committee
C-/ Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
CANBERRA ACT 2600

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

Dear Senator McKenzie,

Thank you for the letter dated March 30, advising of the Senate's decision to refer the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (the Bill) to the Education and Employment Legislation Committee for further inquiry and inviting the National Electrical and Communications Association (NECA) to make a submission.

Last year, NECA made a submission into the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 which focussed upon the introduction of a "National Employer Test" and the exclusion of access to workers compensation claims when injuries occurred during a recess break away from the employer's premises or where a person engages in serious and wilful misconduct.

NECA acknowledges the Government's development of a two stage process to reform the Safety, Rehabilitation and Compensation Act 1988 (SRC Act) and welcomes the opportunity to present further comment towards these legislative amendments.

The National Electrical and Communications Association is the peak industry body for Australia's electrical and communications contracting industry that employs more than 145,000 workers with an annual turnover in excess of \$23 Billion. NECA's membership consists of more than 4,000 businesses across Australia that sits within our state based chapters. In addition to employing executive and administrative staff at our state chapter and national offices, NECA employs more than 4,000 electrical apprentices through Group Training and Registered Training Organisations in each state of Australia.

NECA welcomes the broad objectives of the bill that seeks to make the Comcare Scheme more sustainable over time, with an emphasis on a more vocational nature of rehabilitation, improved fairness and equity for those generally requiring support and the enhancement of the schemes overall viability to ensure a clearer distinguishment between work and non-work related injuries.

We believe that amendments to modernise the Comcare scheme through changes to the SRC Act are important given the lack of reform to this Act and since its commencement in 1988. Throughout this time, there have been many changes in workplace conditions, types of rehabilitation and health care, community expectations and most obviously, the scheme's shift away from its original aim to provide compensation and rehabilitation support to injured Commonwealth and Australian Capital Territory Government employees towards a more broadly based scheme supporting the Australian Defence Force and private industry.

Given the scale and breadth of the electrical contracting industry across Australia and its healthy orientation towards small and medium enterprises, NECA's submission to this focuses upon the most relevant areas of interest for our member businesses, namely:

- *Amendments to the Act to alter eligibility requirements for compensation to align with similar requirements under some state and territory workers' compensation schemes*
- *Distinguish more clearly between work and non-work related injuries through further consideration of whether an ailment or aggravation was contributed through employment*
- *Clarify the rehabilitation responsibilities and duties of liable employers to ensure the rehabilitation of an injured employee*
- *Amendments to the Act to provide that an employee is not entitled to take or accrue any leave of absence provided by the National Employment Standards while on compensation leave*

Amendments to the Act to alter eligibility requirements for compensation to align with similar requirements under some state and territory workers' compensation schemes

NECA is supportive of moves to deliver a more cost effective compensation scheme which include more consistent step-down procedures to encourage and assist injured workers to return to the workplace more quickly.

Under the present Act, income replacement benefits are paid at 100% of pre-injury normal weekly earnings for the first 45 weeks of the claim, reducing to 75% thereafter. Clearly, this scheme is overly generous when compared with other state based schemes and has the consequence of keeping injured workers at home with little to no incentive to return to the workplace. In Victoria, South Australia and Western Australia, the first step down occurs at 13 weeks and all other states are at 26 weeks.

The Hanks Review (The Review) of the SRC Act in 2012 recommended a number of options but ultimately supported a three level step down system. This proposal would offer **100% of earnings for the first 13 weeks** of incapacitation, **90% for the next 13 weeks** and **80% thereafter**.

Whilst this option was recommended as it shifts the burden of compensation from the short to the long term incapacitated, it would only deliver a small saving on the costs of the scheme for Government and in claim costs for its licensees.

However, the proposed recommendation from this inquiry offers a **four level system** for Comcare. This applies the same principles to Hanks Review recommendation but includes an additional step with **80% of earnings offered from 27-52 weeks** of incapacitation and **70% thereafter**. This amendment is justified by evidence of claims within the scheme that suggest that injured workers who are off work for between 13 and 45 weeks are less likely to return to and stay in work.

NECA is supportive of the four-level option for Comcare that puts downward pressure on premiums, reduces claims costs for licensees and decreases burdens for employers under the Act.

Distinguish more clearly between work and non-work related injuries through further consideration of whether an ailment or aggravation was contributed through employment

NECA agrees with moves in the proposed legislation, derived from the Hanks Review that more clearly distinguishes between work and non-work related injuries, containing new definitions of designated injury and pre-existing ailments.

Our submission into the first stage of the review process of the SRC Act strongly argued that employers should not be liable for injury occurred during offsite recess breaks or where serious and wilful misconduct was involved and subsequently, we argue that community expectations would suggest that there remains little justification for employers having to insure against the costs of heart attacks, strokes or incidents that may occur at a workplace where pre-existing genetic, lifestyle based or age related diseases occur without significant employer or workplace contribution.

NECA strongly asserts that workers compensation be made available where workplace conditions have aggravated or contributed to ill-health, via a workers employment. Such amendments would bring the SRC Act into line with Victoria, New South Wales, Queensland, Tasmania and the ACT which exclude heart attacks and strokes from workers compensation benefits where there is no significant employer contribution.

Clarify the rehabilitation responsibilities and duties of liable employers to ensure the rehabilitation of an injured employee

Clear and defined responsibilities for the employer are a critical step to ensuring an effective recovery and a return to workplace for injured employees. NECA supports initiatives that outline clear obligations for employers and employees whilst placing an emphasis on the vocational nature of rehabilitation through new workplace rehabilitation plans.

The proposed legislation provides that a liable employer must consider the need for a workplace rehabilitation plan once formally notified by an employee of a workplace injury

and empowers but does not require a liable employer to formulate a workplace rehabilitation plan for an injured employee in response to a request

Further, the legislation sets out obligations for the liable employer to consult with the employee, any treating medical practitioners or the current employer where applicable.

Amendments to the Act to provide that an employee is not entitled to take or accrue any leave of absence provided by the National Employment Standards while on compensation leave

Section 116 of the Act currently permits leave entitlements such as paid maternity leave, accrual of long service leave, sick leave and recreation leave entitlements during an employee's absence from work on compensation leave.

The Fair Work Amendment Bill 2014 that is currently before Parliament contains an amendment to repeal Section 130 (2) that would no longer permit the taking or accrual of leave as provided for by the National Employment Standards while an employee is on compensation leave.

NECA has strongly argued for legislative consistency in its prior submissions to the Government and believes that the alignment of the proposed amendments across the SRC and Fair Work Acts.

The accrual of leave during an employee's absence, away from the workplace is a significant impost on the business community and typically places an unfair burden on small and medium enterprises with the least capacity to manage workplace disruption and the costs of accrued leave through injury downtime. As the average electrical contracting business employs 13 staff, with 92% employing less than 25 staff, we support the concerns of our members who believe that leave accrual whilst on compensation leave is an unfair cost to bear, particularly for a small business.

Senator, we greatly appreciate the opportunity to provide this submission for the *Inquiry into the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015*.

NECA firmly believes that reform is necessary to the SRC Act and we urge the Government to push ahead with legislative changes that will support the ongoing sustainability of our sector and the small business community.

Yours faithfully

Suresh Manickam
Chief Executive Officer