



Australian Government

Department of Employment

SENATE STANDING COMMITTEE ON
EDUCATION AND EMPLOYMENT LEGISLATION

INQUIRY INTO THE SAFETY, REHABILITATION AND
COMPENSATION (EXIT ARRANGEMENTS) BILL 2015

SUBMISSION OF THE
DEPARTMENT OF EMPLOYMENT

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Introduction

1. The Department of Employment welcomes the opportunity to make a written submission to the Senate Education and Employment Legislation Committee inquiry into the Safety, Rehabilitation and Compensation Amendment (Exit Arrangements) Bill 2015 (the Bill).
2. The Bill was introduced into the House of Representatives on 26 February 2015. The Bill amends the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act). The SRC Act establishes the Comcare scheme.
3. The Bill will:
 - enable Comcare to determine and collect ‘exit contributions’ from former Commonwealth authorities and successors of former Commonwealth authorities (see definition of Commonwealth authority in section 4 of the SRC Act). This will ensure an exiting Commonwealth authority does not leave the Comcare scheme without contributing an appropriate amount to cover any current or prospective liabilities attributable to it which are not funded by premiums it has paid before exit;
 - ensure that employees injured before the Commonwealth authority’s exit continue to be supported by an appropriate rehabilitation authority;
 - enable Comcare to determine and collect ongoing regulatory contributions from exited Commonwealth authorities or successor bodies;
 - support existing measures put in place by Comcare to restore funds to adequate levels to meet estimated liabilities of exiting and continuing employers; and
 - amend provisions related to the Safety, Rehabilitation and Compensation Commission (SRCC) to:
 - i. ensure membership reflects employers that are in the scheme; and
 - ii. provide for members to be appointed by the Minister rather than the Governor-General.
4. The Bill will not have any impact on employees’ rights and entitlements. Employees who are injured before a Commonwealth authority exits the Comcare scheme will continue to receive compensation and rehabilitation under the SRC Act.
5. This Bill will also have no impact on self-insurers in the Comcare scheme since licensees are responsible for funding their own liabilities as a condition of the licence. Similarly, the Bill will have no impact on Entities as defined under the SRC Act (i.e. Commonwealth departments, see definition in section 4 of the SRC Act).

Purpose of the submission

6. This submission outlines how Commonwealth authorities have exited the Comcare scheme in the past and are likely to exit in the future. The Bill does not provide for any Commonwealth authorities to exit the scheme. If this were to occur, it would be through the operation of other enabling legislation.

7. The submission explains the obligations that the Bill will place on employers that exit the Comcare scheme or relevant successors, and how this will provide for greater certainty to employees injured before the employer exited the scheme in accessing employer rehabilitation support.

8. The implications of the Bill are largely financial. The primary purpose of the Bill is to ensure that Commonwealth authorities do not exit the Comcare scheme without contributing an appropriate amount to cover the liabilities and on-going costs for injured employees that remain in the scheme. This will protect the position of premium payers who remain in the scheme and ensure that Comcare's liabilities are fully funded by available scheme funds in the future.

9. The Bill will support existing arrangements to restore funds to adequate levels to meet estimated liabilities by ensuring that any shortfall in funding attributable to current premium payers' liabilities be collected from Commonwealth authorities who exit the scheme. This will not impact self-insurers in the Comcare scheme as they do not pay premiums.

Overview of the Comcare workers' compensation scheme

10. The SRC Act provides rehabilitation and workers' compensation to employees covered by the scheme for a work related injury. The following employees are covered by the scheme:

- Commonwealth and Australian Capital Territory (ACT) public servants
- Employees of Commonwealth and ACT statutory authorities and corporations
- Australian Defence Force members for injuries before 1 July 2004
- Employees of corporations who have a licence to self-insure under the SRC Act.

11. The ACT government is declared to be a Commonwealth authority pursuant to section 4A of the SRC Act.

12. Entities and Commonwealth authorities (alternatively referred to as premium payers) are required to pay annual premiums and regulatory contributions as determined by Comcare under Division 4A of Part VII of the SRC Act. The Comcare scheme is primarily funded by these premiums and regulatory contributions.

In what circumstances do Commonwealth authorities exit the Comcare scheme?

13. The Bill envisages three possible scenarios where a Commonwealth authority may exit the Comcare scheme:

1. a Commonwealth authority ceases to be a Commonwealth authority but continues in existence as a body corporate no longer covered by the scheme;
2. a Commonwealth authority ceases to be Commonwealth authority but is succeeded in law by another entity; or
3. a Commonwealth authority, which is the Australian Capital Territory government, ceases to be a Commonwealth authority by virtue of having its declaration under section 4A of the SRC Act revoked.

14. Since the commencement of the Comcare scheme, Commonwealth authorities have changed their status in a variety of circumstances. Examples include the privatisation of Telstra, the sale of Medibank Private Limited; and the recent amalgamation of the Grape and Wine Research and Development Corporation and the Wine Australia Corporation to create the Australian Grape and Wine Authority. In each case, Parliament enacted separate enabling legislation to provide an administrative framework to govern the transition of these bodies.

15. Some former Commonwealth authorities continue to exist as body corporates and some are taken over by successor bodies or organisations. These successors may or may not continue to be Commonwealth authorities covered by the scheme as defined in section 4 of the Act. Some Commonwealth authorities may cease to exist completely as in the case of the predecessor bodies to the Australian Grape and Wine Authority.

16. The Bill provides a framework to ensure that if any of these situations arise in the future, employees will continue to be supported by a rehabilitation authority and Comcare's available scheme funds and remaining scheme premium payers will be protected. The framework will also apply to all future exits of Commonwealth authorities to ensure consistency in arrangements for meeting liabilities.

How will exiting Commonwealth authority employers be affected?

17. The Bill will provide for three key obligations that may be placed on a Commonwealth authority that exits the Comcare scheme after the Bill commences (or its successor):

- the exited Commonwealth authority, or another appropriate entity, will continue to be responsible for the rehabilitation of employees injured prior to exit;
- an obligation to pay an exit contribution if there are current or prospective liabilities attributable to the Commonwealth authority which are not funded by premiums it has paid before exit; and
- an obligation to pay appropriate ongoing regulatory contributions for services provided by Comcare after exiting the scheme.

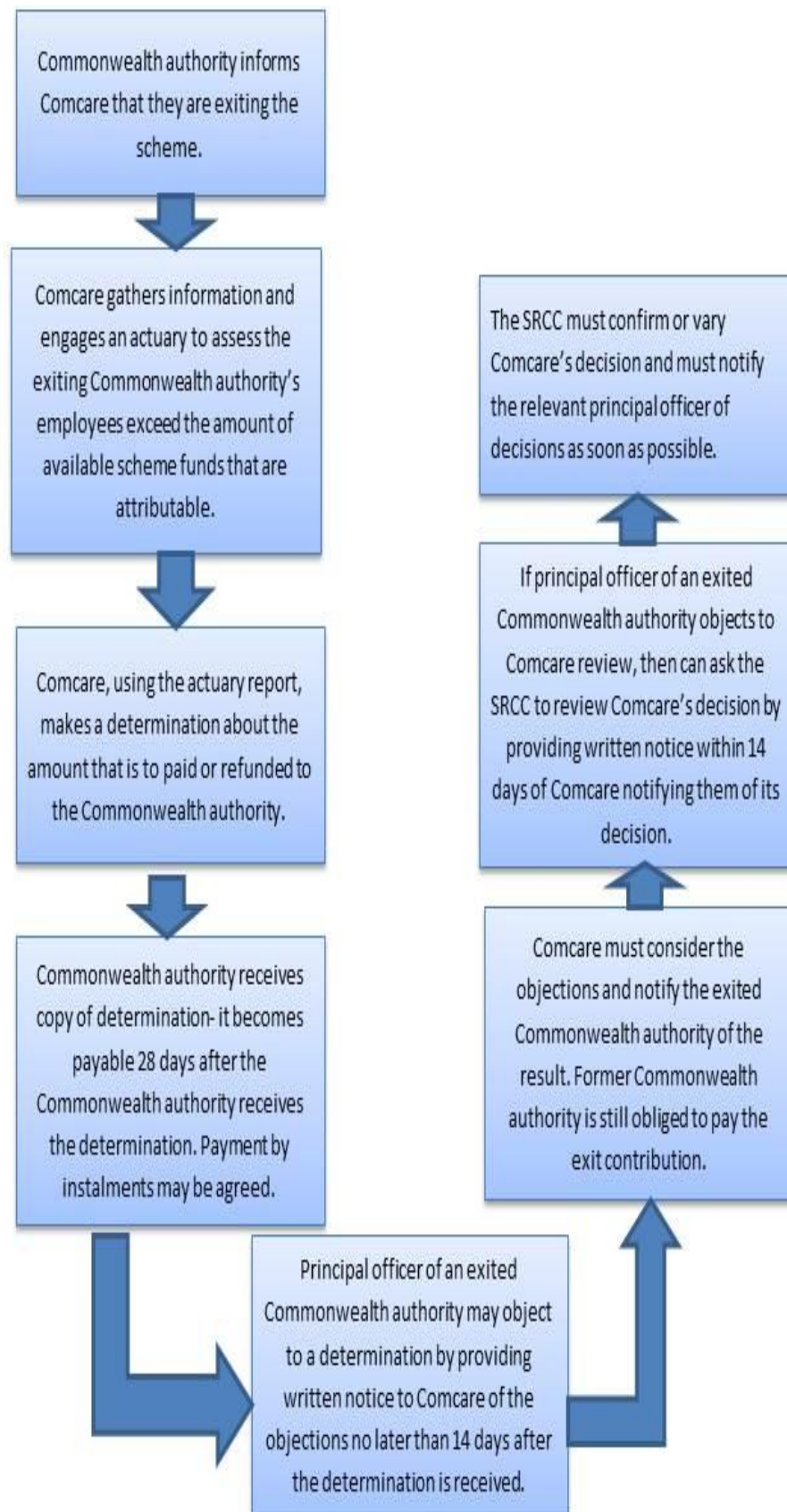
Exit contributions

18. The Bill 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 Commonwealth authority does not leave the Comcare scheme without contributing an appropriate amount to cover any liabilities related to the particular Commonwealth authority that are not funded by premiums paid before exit.

19. The provisions that provide for exit contributions mirror the existing process in the SRC Act for the determination of premiums. Diagram one outlines the process.

20. This process provides multiple opportunities for an exiting Commonwealth authority to request a review of Comcare's calculation of an exit contribution. It is also envisaged that a determination would be made after a series of consultations with the relevant exiting Commonwealth authority and expert advice from an appointed actuary.

Diagram one



Regulatory contributions

21. The Bill will enable Comcare to determine and collect ongoing regulatory contributions from exited Commonwealth authorities or successor bodies. While determinations may continue to be made for a number of years, the amount must reflect the estimated costs incurred by Comcare, which would reduce over time as injuries resolve and investigations are completed for that employer.

22. The amount of regulatory contribution to be paid by a body corporate or the Australian Capital Territory if either ceased to be a Commonwealth authority must not exceed the sum of the estimated cost incurred by the SRCC and Comcare in carrying out their respective functions under the SRC Act, the *Occupational Health and Safety Act 1991*, the *Work Health and Safety Act 2011* and the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011*. For example, Comcare will incur costs in providing support to exited Commonwealth authorities who continue to support the rehabilitation of employees and may incur costs in the early years following exit as work health and safety investigations for incidents that occurred before exit are finalised. Comcare must determine the estimated costs in accordance with the principles under section 97E of the SRC Act and ensure that estimated costs are referable to the body corporate or the Australian Capital Territory.

23. An affected Commonwealth authority would be able to seek a review of a determination of a regulatory contribution in the same manner that a review of an exit contribution would occur (see paragraph 19 above).

Rehabilitation obligations

24. Once a Commonwealth authority ceases to be covered by the scheme, either because it has been abolished or transitioned to a new Commonwealth authority or entity, there can be lack of clarity for an employee about which organisation is responsible for providing rehabilitation support to an injured employee. This contributes to delay in providing rehabilitation support and poor return to work and health outcomes for injured employees.

25. Item 4 of the Bill will ensure that where a Commonwealth authority exits the Comcare scheme, arrangements are established for the most appropriate entity (an injured employee's current employer or other appropriate person) to continue to perform the role of rehabilitation authority and relevant employer under the SRC Act.

26. Part 3 of the SRC Act places a number of obligations on rehabilitation authorities and relevant employers to support employees in their rehabilitation. For example, a rehabilitation authority is responsible for determining appropriate rehabilitation programs for employees, paying reasonable compensation for modifications to the workplace and providing compensation for required aids and appliances (see sections 37 and 39 of the SRC Act). Relevant employers are required to take all reasonable steps to provide employees with suitable employment (see section 40 of the SRC Act). The SRC Act also establishes a framework for review of determinations related to rehabilitation that ensures employees are able to challenge decisions made by their rehabilitation authority.

27. The Bill recognises the importance of existing arrangements and protections for injured employees being maintained by a Commonwealth authority exiting the Comcare scheme and ensures that injured employees continue to be supported to return to work and participate in employment.

How will employees of exited Commonwealth authorities be affected?

28. As outlined above, the Bill does not provide for or enable the exit of any Commonwealth authority employers from the Comcare scheme. Future exits will occur when Parliament enacts legislation to sell, abolish, or otherwise transition a Commonwealth authority and in each case the impact on a particular group of employees may be considered at that time.

29. As is currently the case when an employer exits the Comcare scheme, an employee who is injured before an exit will remain entitled to compensation and rehabilitation under the SRC Act. The employee's entitlement to compensation would not be affected in any way.

30. What the Bill does provide for is the preservation of rehabilitation arrangements to ensure that there is continuity for injured employees and they continue to be supported by their employer or another appropriate body (e.g. the successor to their employer). See also paragraphs 24-27 above.

Consultation

31. Consultation was undertaken with the ACT Government and with Comcare to ensure that there will be no unintended consequences arising from this Bill.

Conclusion

32. The Bill ensures that there is stability for workers, employers and the Comcare scheme when a Commonwealth authority exits the scheme.

33. The Bill also ensures that an exiting Commonwealth authority does not leave the Comcare scheme without contributing an appropriate amount to cover any current or prospective liabilities that are not funded by premiums that the employer has paid before its exit.

34. The Bill will enable Comcare to determine and collect ongoing regulatory charges owed by premium payers who exit the scheme.

35. This Bill will also support current measures that Comcare has put in place to restore scheme funds to adequate levels.

36. The Bill will ensure clarity in identifying the appropriate rehabilitation authority for employees injured prior to the exit of a Commonwealth authority.

37. This Bill will not change any existing benefits or entitlements for injured workers.