



Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015

Background:

Transpacific Industries Pty Ltd (TPI) understands that the focus of the Bill is to make the Comcare scheme sustainable over time with a broad focus on:

1. Emphasis on the vocational (rather than medical) nature of rehabilitation services and contains measures designed to improve RTW outcomes in the scheme
2. Promotes fairness and equity in outcomes of injured employees by targeting support for those who need it most; and
3. Strengthens the integrity and viability of the scheme by clearly distinguishing between work and non-work related injuries, improving the quality of compensable medical treatment and support services, and limiting legal and medical costs under the scheme.

As TPI is a self-insurer in the scheme, the sustainability of the scheme is important to the organization and TPI generally supports the proposed legislative changes.

With reference to the specific amendments set out in 17 Schedules TPI outlines the following as its response to each of the Schedules:

Schedule 1- Amends the Act to alter eligibility requirements for compensation to align with similar requirements under some state and territory workers' compensation schemes.

The amendments:

- distinguish more clearly between work and non-work related injuries by requiring certain matters be taken into account in determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee's employment;
- introduce new eligibility criteria for compensation for designated injuries (such as heart attacks, strokes and spinal disc ruptures) and aggravations of designated injuries (based on recommendation 5.3 of the Review);
- increase the threshold for perception-based disease claims (based on recommendation 5.2 of the Review); and
- widen the scope of the 'reasonable administrative action' exclusion to encompass injuries suffered as a result of reasonable management action generally (including organisational or corporate restructures and operational



directions) as well as the employee's anticipation or expectation of such action being taken (based on recommendation 5.5 of the Review; aligns the Act with 'reasonable management action' in the bullying provisions in the *Fair Work Act 2009*).


TPI supports the proposed amendments under Schedule 1. The introduction of the new criteria for injury definition exclusions for reasonable management action (including anticipated actions and organizational and corporate restructures) and designated injuries (e.g. heart attacks, strokes and spinal disc ruptures) where there is no significant employment contribution are beneficial changes and will bring the scheme into alignment with State based workers compensation legislation. The increase to the threshold for perception-based disease claims and enabling Comcare to provide compensation standards for ailments is also supported. Overall the proposed amendments under Schedule 1 will greatly assist employers in reducing the burden of cost for lifestyle and age related disease processes over which they have limited control.

Schedule 2 amends the rehabilitation and return to work requirements in the Act to emphasise the vocational (rather than medical) nature of rehabilitation services to align with similar requirements under some state and territory workers' compensation schemes and to improve return to work outcomes under the Comcare scheme.

The amendments:

- clarify the rehabilitation responsibilities and duties of liable employers' to ensure the rehabilitation of an injured employee and to provide, or assist the employee to find, 'suitable employment' and maintain the employee in suitable employment (based on recommendation 6.1, 6.5, 6.7 and 6.8 of the Review);
- combine the 2-step process for the development of rehabilitation programs into a single process to ensure that workplace rehabilitation is delivered on a service continuum of assessment of need, planning, active implementation, review and evaluation (based on recommendation 6.13 of the Review);
- expand the existing definition of 'suitable employment' to include any employment with any employer, including self-employment (based on recommendation 6.16 of the Review); and
- provide relevant authorities with the discretion to perform work readiness assessments.


TPI supports the proposed amendments under Schedule 2. Simplifying and streamlining the administrative process in relation to the provision of services relating to rehabilitation is welcomed as they will reduce time spent on activities



that don't currently contribute to the quality and performance of the RTW process. The focus on work readiness and assessment in line with vocational capability rather than incapacity is also of significant benefit and the commencement of a work placement incentive scheme for employers provides a further means of facilitating employment (with learnings from similar successful State based incentive schemes) in line with the focus of the Bill.

Schedule 3 makes a number of amendments to the Act to improve the integrity and financial viability of the Comcare scheme. These amendments align with similar requirements under some state and territory workers' compensation schemes.


In particular, the amendments:

- require third parties to indemnify compensation payers under the Act in circumstances that give rise to both an obligation to pay compensation under the Act and a liability on the part of the third party to pay damages (based on recommendation 10.1 of the Review) or State compensation;
 - provide more timely and responsive services and support for injured employees by requiring employers to forward claims to Comcare within 3 days of receipt and specifying time limits in relation to the determination and reconsideration of compensation claims (based on recommendation 9.2 of the Review);
 - improve a relevant authority's information gathering powers in relation to both compensation claims and the administration of liabilities (based on recommendation 9.17 of the Review);
 - require licensees (and a relevant authority for a group employer licence) to notify Comcare of any proceedings they commence under the Act and empower Comcare to request documents relevant to any proceedings brought against, or instituted by, a licensee (or a relevant authority for a group employer licence);
 - require licensees (and corporations covered by a group employer licence) to comply with applicable Commonwealth, State and Territory laws with respect to the safety, health and rehabilitation of workers;
 - enable Comcare to recover overpayments of compensation that have been made to an employer by Comcare; and
 - enable Comcare to pay compensation for detriment caused by defective administration (based on recommendation 9.20 of the Review).
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TPI supports the proposed amendments under Schedule 3. TPI strongly agrees with the changes to the recovery capabilities of the compensation payer as the current process strongly limits the ability of the compensation payer to seek recovery. TPI supports the changes to the information gathering powers of Determining Authorities (including refusal or failure to provide information or documents within the 14 day specified timeframe, without a reasonable excuse resulting in a breach of an obligation of mutuality and the implementation of the sanctions process); changes to timeframes for claim determination and reconsideration and when timeframes are not met the claim is determined to have been rejected therefore enabling the reconsideration process. These are all measures designed to improve the quality of liability decisions and expedite this process. The obligation to inform or notify the relevant authority in relation change in employee's circumstances is also supported. The amendments relating to enabling a compensation payment by Comcare for defective administration and Comcare being able to seek recovery of overpayments from premium payers don't relate directly to TPI and therefore TPI makes no comment on this element of the proposed amendments.

Schedule 4 amends the Act to enable a relevant authority to make provisional medical expense payments (capped at \$5000) in respect of an alleged injury before a claim is determined (based on recommendation 6.2 of the Review). These amendments are broadly based on similar provisions in the NSW workers' compensation scheme.

TPI does not fully support the amendments proposed under Schedule 4. TPI strongly agrees with the provisional medical expense process as it already allows an ability to pay provisional expenses under an Early Intervention program. This is currently working well with the goal of employees receiving and having access to medical assessment and treatment post injury without a need for liability determination. Treatment then follows from this, but it is time and cost limited to enable management and control. It also ensures that claims are moved to determination of liability outside of the set parameters. This sets an expectation that if the nature of the injury is ongoing then the claim liability determination process is important to ensure the appropriate expertise in its management. The ability to recover payments being made as a result of false or misleading statements is an important protection in this process. TPI's primary concern with the proposed change is the legislated amount of \$5000 as an upper limit. This will potentially present an extra burden in relation to management of this process, potentially delay employees submitting claims as they will be keen to utilize the full (new) amount available under provisional medical treatment. TPI proposes that the capped amount is not legislated but at the discretion of the relevant authority.



Schedule 5 amends the Act to impose more rigorous requirements in relation to determining the amount of compensation payable under section 16 of the Act in respect of medical expenses incurred by an injured employee (based on recommendations 7.1, 7.24 to 7.27 and 7.28 of the Review). These amendments are broadly based on similar requirements under the Victorian workers' compensation scheme.

TPI supports the proposed amendments under Schedule 5. Ensuring that medical treatment is performed by nationally AHPRA registered or Comcare accredited health practitioner, the prescribing of Schedule 8 drugs by a designated doctor or medical clinic and the ability to disclose information to disciplinary bodies will enhance clinical standards and controls of treatment delivery. The requirement to consider the Clinical Framework principles has had a successful impact on medical treatment management in the Victorian scheme and will similarly benefit the Comcare scheme. The issuing of a schedule of medical service examination and report rates will place greater controls over costs for these activities. Approval of treatment outside of Australia enables employees injured outside of Australia quicker access to treatment which again is of benefit.

Schedule 6 amends Division 5 of Part II of the Act (and related provisions) which deal with the payment of compensation for household services and attendant care services. Amendments regarding household services and attendant care services for employees with catastrophic injury will comply with minimum benchmarks set for workers' compensation schemes to align with the National Injury Insurance scheme. These amendments also align with similar requirements under some state and territory workers' compensation schemes.

In particular, these amendments:

- establish a tiered approach to the payment of compensation for household services and attendant care services, depending on whether the employee's injury was catastrophic, and limit the period for which compensation is payable to employees with a non-catastrophic injury (based on recommendation 7.33 of the Review);
- require an independent assessment of an injured employee's need for household services, attendant care services or both (based on recommendation 7.35 and 7.36 of the Review); and
- require attendant care services to be provided by accredited, registered or approved providers (based on recommendation 7.37 of the Review).

TPI supports the proposed amendments under Schedule 6 recognising the importance of supporting catastrophic injuries with suitable household services following National Guidelines. The tiered approach recommended also recognises



the difference in case needs in relation to catastrophic and non-catastrophic cases with specific focus on the management of non-catastrophic cases in line with independent assessment of the servicing requirements. The importance of the servicing being provided by accredited, registered and approved providers to ensure the quality of those services also meets National Standards is supported. The setting of the 3 year limit for non-catastrophic cases (with payment beyond 3 years extended only if there is hospitalization for a further 6 months) will need to be tested for outcomes over time.

Schedule 7 amends the Act to suspend compensation payments when an injured employee is absent from Australia for non-work related purposes for a period of more than 6 weeks and enhances the notification requirements for recipients of compensation proposing to leave Australia (based on recommendation 7.17 of the Review). These amendments align with certain provisions of the *Social Security Act 1991* and some state and territory workers' compensation schemes.

TPI supports the proposed amendments under Schedule 7.

Schedule 8 amends section 116 of the Act to provide that an employee is not entitled to take or accrue any leave or absence provided by the National Employment Standards while on compensation leave consistent with proposed amendments to section 130 of the *Fair Work Act 2009*.

TPI supports the proposed amendments under Schedule 8 understanding that this amendment is consistent with the proposed amendments to the Fair Work Act.

Schedule 9 contains amendments that align with some state and territory workers' compensation schemes.

These amendments:

- alter the method of calculating an employee's weekly incapacity payments to better reflect the employee's earnings before their injury and clarify the operation of the cap on average weekly earnings (based on recommendation 7.1 and 7.2 of the Review);
- introduce new 'step down' provisions to taper the amount of weekly compensation payments an injured employee is entitled to (based on recommendation 7.13 of the Review);



- link the payment of incapacity payments to the pension age, rather than cutting off those payments at a set age (based on recommendation 7.16(a) of the Review); and
- remove the 5% deduction on compensation payments to employees who are accessing superannuation benefits. (based on recommendation of 7.6 of the Review).

TPI does not fully support the amendments proposed under Schedule 9. The alignment of retirement age to pension age and the greater flexibility in determining the 'relevant period' are not fully supported. With the relevant period remaining flexible this leaves a greater opportunity for cases being disputed. If the relevant period was set at 12 months this would potentially provide a set process that if applied would not result in dispute. When flexibility is offered it can lead to disputes and challenges as to what the relevant period should be. Although the 'step downs' are agreed to, the opportunity to set a 104 week capacity test as per the Victorian legislation would be welcomed.

TPI supports all of the changes to the concept of normal weekly earnings to average weekly remuneration, the change in calculation method, the proposed incapacity step down arrangements, the amendment addressing the *Comcare v Simmons* and *Comcare v Burgess* decisions, changes to minimum earnings arrangements and AWOTEFA reduction provisions and the increase in statutory amount for compulsory redemptions.

Schedule 10 amends the Act to increase the compulsory redemption threshold (based on recommendation 7.19 of the Review). These amendments align the Act with the *Military Rehabilitation and Compensation Act 2004*.

TPI supports the proposed amendments under Schedule 10.

Schedule 11 contains a range of amendments designed to control, and thereby reduce, costs under the Comcare scheme associated with proceedings brought before the Administrative Appeals Tribunal (AAT), noting that Comcare scheme disputes take longer to resolve than disputes in other Australian workers' compensation schemes (based on recommendation 9.12 of the Review). These amendments align with some state and territory workers'

TPI supports the proposed amendments under Schedule 11. The ability for Comcare to set a Schedule of Legal Costs, the payment of legal costs at reconsideration stage under specified conditions and the AAT carrying the discretion to make cost orders against a claimant in limited circumstances and setting limits on the timeframes for the admission of new evidence prior to a Hearing (but with the AAT being able to grant leave to admit evidence) are all



measures that are designed to reduce unnecessary legal costs in relation to AAT matters. These changes will also serve to expedite AAT cases and align to improvements made in relation to State based legal case management which is supported by TPI.

Schedule 12 contains amendments that align with some state and territory workers' compensation schemes.

These amendments:

- combine the compensation payable for permanent impairment under section 24 of the Act and compensation payable for non-economic loss under section 27 of the Act into a single permanent impairment payment under section 24, and increase the maximum benefit payable under section 24 to \$350,000 (based on recommendation 8.4 of the Review);
- provide a new method for calculating permanent impairment compensation that more equitably distributes compensation based on the level of permanent impairment (based on recommendation 8.5 of the Review);
- treat multiple injuries arising out of the same incident or state of affairs as a single injury so that the impairment resulting from that deemed single injury can be combined to achieve a whole person impairment value (based on recommendation 8.2 of the Review);
- require relevant authorities to discount pre-existing conditions (both compensable and non-compensable) when assessing the level of permanent impairment resulting from an injury; and
- exclude access to permanent impairment compensation for secondary psychological or psychiatric ailments and injuries.

TPI supports most of the proposed amendments under Schedule 12 with the amendments designed to ensure those employees with the greatest level of impairment receive the greatest compensation. This will be assisted by raising the maximum lump sum amount for payment (a new method for calculating permanent impairment compensation that permits more equitable distribution of compensation based on the permanent impairment level), the removal of non-economic loss payments, the secondary psychiatric impairment not being compensable, the improved clarity in relation to the assessment and discounting of pre-existing conditions and the deduction for past compensation for permanent impairment relating to the same injury.

TPI does not support the legislative amendment of the *Canute v Comcare* which is the consequence of the combining of 2 or more injuries arising from the same



incident or associated injuries and the associated injuries including secondary injuries being treated as a single injury.

Schedule 13 amends the Act (as it will be amended by the Safety, Rehabilitation and Compensation Amendment Bill 2014) to clarify that a single employer licence for an eligible corporation or group employer licence must authorise acceptance of liability and management of claims, and that a single employer licence for a Commonwealth authority must authorise acceptance of liability or management of claims, or both.

TPI supports the proposed amendments under Schedule 13.

Schedule 14 amends the Act to clarify compensation responsibilities for gradual onset injuries (including for incapacity, impairment or death resulting from gradual onset injuries) where employment by 2 or more employers covered by the Act has contributed, to a significant degree, to the injury, and provide for apportionment of liability between employers covered by the Act. These amendments align with some state and territory workers' compensation schemes.


TPI supports the proposed amendments under Schedule 14 as it provides a clear process to follow for the management of costs on cases where there has been a gradual onset injury where the employment by 2 or more employers covered under the SRC Act have contributed to a significant degree including apportionment to each of these employers based on their contribution to the gradual onset injury.

Schedule 15 amends the Act to streamline and enhance the existing regime of sanctions. These amendments align with some state and territory workers' compensation schemes.

In particular, these amendments:

- identify key requirements of the Act that an injured employee must comply with as 'obligations of mutuality'; and
- where obligations of mutuality have been breached, provide for the application of sanctions in stages, culminating in a cancellation of compensation, rehabilitation and review rights.

TPI supports the proposed amendments under Schedule 15. The introduction of the concept of obligations of mutuality will improve compliance with the key requirements of the Act. The breakdown of the breaches of obligation into



(remediable and non-remediable) and the three-stage sanctions regime appears to provide a 'weighting' to the importance of the breach and the sanctions applied looks to give an opportunity to remedy the breach or face a greater level of sanction. The breaches as listed are typically the breaches that slow/reduce the effectiveness and outcomes of the rehabilitation process therefore these changes should improve rehabilitation processes. This is a marked improvement to the current suspension provisions which are difficult to enact and largely ineffective. The requirement for a diagnosis for a psychological or psychiatric ailment or injury (or aggravation of same) to be confirmed by a mental health practitioner (psychiatrist, clinical psychologist or general practitioner who has completed mental health training that has been Comcare approved) in order for weekly incapacity payments to be made beyond an initial 12 week period is welcomed as will enhance the process of ensuring that there is specialized support and review for these cases in the early stages. This supports early return to work and facilitated and effective rehabilitation.

Schedule 16 amends the Act to ensure that the amendments made by Schedules 1-15 to the Bill, with minor exceptions, do not apply to defence-related claims.

TPI raises no issues with the proposed amendments under Schedule 16 noting that the amendments do not apply directly to TPI.

Schedule 17 amends the Act to define a number of terms that are used in the amendments contained in the various schedules to the Bill.

TPI supports the proposed amendments under Schedule 17.

