



**Superannuated Commonwealth Officers' Association
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**INQUIRY INTO THE SAFETY REHABILITATION AND COMPENSATION
ACT AND OTHER LEGISLATION AMENDMENT BILL 2006.**

**SUBMISSION FROM THE SUPERANNUATED COMMONWEALTH OFFICERS'
ASSOCIATION**

JANUARY 2007

ABOUT SCOA

The **Superannuated Commonwealth Officers' Association (Federal Council) Inc. (SCOA)** is 83 years old, apolitical, not for profit and financed entirely by its members.

It represents the interests of:

- retired Australian and Territory Government employees and Government business enterprise employees;
- people in the public service who will receive a Commonwealth superannuation benefit (or lump sum) on retirement;
- former employees who have deferred (preserved) their pension entitlement; and
- spouses/dependents of the above.

At 30 June 2006, there were 400,205 members of the CSS and PSS schemes, being:

- 178,022 contributors;
- 119,562 pensioners; and
- 102,621 deferred beneficiaries.

There were also 7,843 pensioners in the old 1922 scheme.

SCOA has a national (Federal Council) office in Canberra and separate branches in each State and the ACT. Its branches are staffed by volunteers. SCOA has links with Defence and State superannuant organisations and with other key organisations which represent the interests of older Australians.

SCOA's objectives are to:

- improve and safeguard the retirement interests of its members and constituency;
- protect the value of members' superannuation entitlements and related benefits;
- ensure that its members who have work related injuries or illnesses receive their correct compensation entitlements.
- secure fair and equitable treatment compared with other retirees and pensioners, and
- provide information to members on issues such as superannuation, taxation, Age and other Social Security and Veterans' Affairs benefits, health and aged care, concessions, compensation, employment of older workers and general investment matters.

EXECUTIVE SUMMARY

SCOA is very concerned that the legislation, as proposed, generally seeks to further diminish the access, coverage and benefits to Commonwealth employees who are injured at work. There is a small but welcome low cost exception namely the change in the 10% deeming rate applied to lump sums of employer superannuation contributions. However, even this, could hardly be described as a generous correction of what has been a crushing financial burden on the COMCARE clients affected.

The key issues raised in this submission are

1. That the proposed amendments will absolve employers from their responsibility where a work related illness/injury, whilst not being the primary cause of the health condition, is nonetheless a contributor. SCOA believes that the linkage of employment to disease be maintained as a "material contribution".
2. That workers' compensation coverage of travel between the employee's residence and the employee's usual place of work should be retained
3. That workers' compensation coverage of the employee when they are temporarily absent from the employee's place of work be retained.
4. That to maintain Normal Weekly Earnings, apply an index, twice yearly, that better reflects wage and salary movements such as MTAW (Male Total Average Weekly Earnings)
5. That incapacity payments be maintained at 75% of normal weekly earnings on redundancy or invalidity and not be reduced by a nominal superannuation contribution of 5%.
6. That the proposed change to the deeming rate (applicable to employer funded lump sum superannuation payments to COMCARE clients) be seen as an inadequate improvement and be changed to align with the deeming rate applicable in assessing Age Pension eligibility;
7. That the deeming rate be applied to the post-tax lump sum amount.

For some years many COMCARE's clients who are members of SCOA, have sought SCOA's assistance in pursuing their correct compensation entitlements. Our record of success in this area is notable. This has enabled SCOA to become reasonably familiar with COMCARE's administrative processes and its application of the relevant legislation, the Safety Rehabilitation and Compensation Act.

However, it is our view that for the most part, the proposed changes to the SRC Act are unfair to the employee, are designed to reduce the number of beneficiaries, the scope and level of benefits. They also ignore changes that are occurring in the workplace and in our society generally and that can impact on the prevalence, in particular, of mental health illnesses.

We note that the Government is concerned that the administering agency, COMCARE, has reported a growth in the incidence and cost of claims. However, it seems that the concern over the rising incidence of such claims and their cost may have ignored the following:

- a) The escalation of mental health illness in Australia generally, e.g. between 1995 and 2001 the prevalence of such illness rose by 63% and between 2001 and 2004/05 it rose a further 11%, (*ABS National Health Survey.*)
- b) The significant increase in the number of Commonwealth Public servants over the past few years.

In relation to a), rather than attack the consequences of such illness, SCOA recommends that the Government look at the causes and apply resources to overcome the increasing prevalence of mental illness.

We note that in pursuit of cost containment, a core principle influencing the reasons for most of the proposed legislative amendments is that an employer should not be responsible for matters over which it has no control. On this principle employers need only to decide and to take action to put matters beyond their control and thus avoid responsibility for them. SCOA believes that to limit or restrict claims according to this principle would severely disadvantage many Government employees, who have faithfully served successive governments. SCOA strongly contends employers should be held accountable for the decisions they take that affect their workforce.

Further, some of the proposed changes are very likely to shift the financial load to other Government and some non Government authorities, e.g. Medicare, Centrelink and private health funds. SCOA asks if this cost was accounted for in calculating the cost savings.

Having experience with the manner in which COMCARE is administered, our association believes that a closer look at the administration of COMCARE might well find cost savings. An independent review of the administration of claims, decisions, reviews and appeals would seem to be a good starting point. The review also could include: a study of the rate of claims by Commonwealth employees and what influences employees to claim or not to claim for a work place injury; and a study of the satisfaction of COMCARE clients in the handling of their claims.

Regulation Impact Statement

Our only comment under this heading is that it might have been useful to also provide statistics and cost figures for non-Commonwealth compensation schemes to enable comparisons to be made.

COMMENTS ON PROPOSED AMENDMENTS

Definition of Disease.

Whilst SCOA appreciates the concern that the Government has with the interpretation the courts and the AAT have at times made regarding the tests of "material degree," the proposed amendments are a shift too far in the opposite direction and will absolve employers from their responsibility where a work related illness/injury, whilst not being the primary cause of the health condition, is nonetheless a contributor.

If we are to accept that a work related injury/illness may be the secondary causal contributor to a health condition, SCOA believes that the extent to which that work related injury/illness contributes to the health condition, an employer liability exists and proportional compensation should be payable.

There is a significant risk and therefore concern that the far tighter test for determining employer responsibility will lead to poor staff management and exacerbate existing mental health problems for some staff. This is a matter of deep concern and we ask that it be given due consideration in the course of the inquiry.

Employees are increasingly subjected to stress due to significant and rapid changes in our society. For example, the ongoing requirement that Commonwealth employees "do more with less" as evidenced by the annual efficiency dividend built into Government Departments' budgets understandably results in staff finding smarter, more efficient ways of working. However, it often brings with it an undeniable expectation for staff to work longer hours, often at the risk of creating tensions with family life which in turn can be reflected in poorer work performance and stress related illness. Members of this organisation have witnessed this during their working life and we are aware that it is still in existence.

Examples of such changes in our society include sharply rising house and rental costs. As Committee members would be aware, house affordability is at its worst ever level. Rents in most capital cities are at record levels as is rental availability. This in turn has helped lead to increases in average hours worked, young mothers having to seek employment or increase their employment hours to help meet rising mortgage or rental payments. Such changes produce stress within families and within the work place.

Journeys to and from work

Of all the many changes that will diminished the conditions enjoyed by the Australian workforce this could prove to be one of the most far reaching and injurious to workers. It may also be one of the changes that cause the most resentment.

The underlying argument regarding most of the proposed changes to the SRC Act is that an employer should not be responsible for events over which it has no control. Whilst this principle has some validity, SCOA believes that it can and should be equally applied to the employee. Firstly, the employee must travel if he or she is to work, unless working from home. Why then should an employee be responsible for the medical costs arising from an accident over which they have no control, particularly when they are in transit to reach their workplace?

Further, employers should be responsible for the impact of decisions they take. For example, the Commonwealth Government has decided to build a defence headquarters facility near Bungendore NSW. This facility will be located adjacent to the Kings Highway a road that has often been described in the press as dangerous. Most employees at this facility will need to drive a considerable distance each day to and from work (at least 50 plus kilometres per day). Accidents (to staff) along this route can be related to a decision by the employer on the location of the facility. If there is to be no employer compensation cover for travel, to and from, then this defence facility stands an excellent chance of becoming a least preferred workplace.

Wherever possible, workers not covered for travel to and from work will need to relocate near their employment or near to public transport. The latter ensures some coverage, however elusive, but brings with it an unplanned cost and significant inconvenience for employees.

More broadly the Australian workforce is used to Compensation insurance arrangements that include travel to and from work.

For individuals injured on the way to and from work its removal will have far reaching effects that include:

- Loss of earnings;
- Loss of job;
- Incapacitation, temporary or permanent with no compensation
- Death with no compensation for dependents

For Governments there will be an added burden of costs to provide:

- Medical, hospital services, rehabilitation and other ancillary health services

- Income support for the individual and dependents

For the individual

- The requirement to meet the 'gap' costs and
- In the worst case scenario, besides long term suffering, loss and deprivation.

With an understanding of the difficulties so many lower income COMCARE clients face, SCOA strongly urges the Senate Committee to retain coverage of travel to and from work in any amended legislation that it supports.

Recess Breaks

SCOA is concerned at the proposed amendment regarding recess breaks because it relates to a decision by an employer whether to provide canteen facilities for employees. If none are provided the employee is required to bring the necessary food and drink items to work or will need to leave the workplace to purchase them. Doubtless these were considerations in framing the existing legislations.

SCOA's other concern with the proposed amendment regarding recess breaks is that whereas the employer encourages staff to maintain a healthy lifestyle, which requires regular exercise, any injury resulting from such activities would not be compensable even when an employee is travelling to and from work or whilst undertaking an exercise activity during a work recess/break.

There is an increasing incidence of employer sponsored gym and exercise facilities and associated encouragement for staff to exercise regularly. The fact that an employee chooses to use an exercise facility or undertake other forms of exercise for the same purpose as that intended by employers funding in-office exercise equipment/programs, should not in our opinion, disqualify them from being compensated if they incur an injury.

Calculation of Normal Weekly Earnings

Due to the application of a wage cost index (one of the lowest of the wage indexes) to adjust their Normal Weekly Earnings, COMCARE clients progressively receive less than 75% of the salary presently payable for the position they once held. This gap continues to widen. SCOA urges the Senate Committee to endeavour to ensure the legislation changes to apply an index, twice yearly, that better reflects wage and salary movements such as MTAW (Male total Average Weekly Earnings) as used for the Age and Veterans' Affairs pensions.

SCOA has for some years has been expressing its concern about the reduction, by a 5% per annum notional superannuation contribution, to the

level of Normal Weekly Earnings of COMCARE clients. (The overall benefit includes the COMCARE client's own superannuation pension and a contribution from COMCARE that should ensure the client receives 75% of normal weekly earnings) The notional 5% deduction is not paid to any complying superannuation fund to later benefit the injured worker who receives neither the capital nor any earnings.

Therefore, the 5% withholding of a notional superannuation contribution from COMCARE payments does nothing more than reduce the fortnightly income of the COMCARE client and is unjust. As it is, the fortnightly payments, **before** the 5% notional deduction, are only 75% of the injured worker's former salary (as indexed), so COMCARE clients are already receiving an income considerably less than what they received prior to their injury/illness. SCOA asks the Senate Committee to recommend reinstatement of 75% of Normal Weekly Earnings.

Deeming Rate applied to Lump Sum Payments

From a meeting it had with Minister Andrews early in 2006, SCOA understood this issue would be addressed as an outcome of the 2006/07 Budget. We are very disappointed that the proposed deeming rate is to be higher than that used for the purposes of determining Age Pension entitlements. If the proposed rate is introduced it will be most discriminatory and inconsistent with the rationale used by the Government when setting the deeming rate for the Age Pension means test.

There is simply no justification for the Government to apply a higher deeming rate to lump sum payments when assessing compensation payments, than that used to assess Age Pension entitlements. The capacity to earn a given interest rate is surely the same for all Australians with the same amount of investment capital.

The application of a 10% deeming rate in calculating injured workers' compensation payments is clearly discriminatory when a much lower deeming rate is applied to other Government-funded payments and SCOA urges the removal of this discrimination against the Government's former employees.

To make matters even worse the application of any deeming rate to a pre tax lump sum increases the effective deeming rate. A SCOA member has informed us that he drew a lump sum of \$140,000, was taxed \$21,000 and has been paying 10% per annum (\$14,000) as a reduction in his COMCARE benefit. The effective rate of interest is therefore much higher than 10%.

SCOA urges the Senate Committee to endeavour to ensure the legislation changes

- To the deeming rate are those applicable to Centrelink benefits such as the Age pension; and
- Apply the deeming rate to the **post-tax** lump sum amount.

