

Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014

Portfolio: Employment

Introduced: House of Representatives, 19 March 2014

Purpose

2.40 The Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 seeks to make a number of amendments to the *Safety, Rehabilitation and Compensation Act 1988* (the Act). The explanatory memorandum for the bill states that the amendments are intended to reduce the cost of the regulatory burden on the economy by implementing recommendations of the 2012 Review of the *Safety, Rehabilitation and Compensation Act 1988* (the Review).¹ The bill will amend the Act to:

- remove the requirement for the minister to declare a corporation to be eligible to be granted a licence for self-insurance, while retaining the ability for the minister to give directions to the Safety, Rehabilitation and Compensation Commission (the Commission);
- enable corporations currently required to meet workers' compensation obligations under two or more workers' compensation laws of a State or Territory to apply to the Commission to join the Comcare scheme (the 'national employer' test);
- allow a Commonwealth authority that ceases to be a Commonwealth authority to apply directly to the Commission for approval to be a self-insurer in the Comcare scheme and be granted a group licence if the former Commonwealth authority meets the national employer test;
- enable the Commission to grant group licences to related corporations;
- make consequential changes to extend the coverage provisions of the Work Health and Safety Act 2011 to those corporations that obtain a licence to self-insure under the Act; and
- exclude access to workers' compensation where injuries occur during recess breaks away from an employer's premises; or a person engages in serious and wilful misconduct, even if the injury results in death or serious and permanent impairment.

1 See Department of Employment website, 'Safety, Rehabilitation and Compensation Act Review', <https://employment.gov.au/safety-rehabilitation-and-compensation-act-review-0> [accessed 9 July 2014.]

Background

2.41 The committee reported on the bill in its *Fifth Report of the 44th Parliament*.

Committee view on compatibility

Right to social security and rights at work

Changes to the licensing system

2.42 The committee sought clarification from the Minister for Employment as to whether the proposed changes to the licensing system may limit the right to social security and the right to enjoy just and favourable conditions of work and, if so:

- whether the limitation is aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is proportionate to that objective.

Minister's response

The Committee noted that, if passed, the Bill will have the effect of expanding and changing the eligibility criteria for licencing under the *Safety, Rehabilitation and Compensation Act 1988*, which will bring more employers, and therefore employees, under the (Commonwealth) Comcare scheme. It also noted that the 'minor variations' between the Comcare scheme and the state and territory workers' compensation schemes might reduce the amount of compensation being received by an injured worker who has moved from a state or territory scheme to the Comcare scheme. The Committee noted that such variations may represent a limitation on the right to social security and the right to enjoy just and favourable conditions of work.

The Coalition Government submits that the minor variations in compensation amounts between the Comcare scheme and the state and territory schemes merely reflect different approaches and priorities by the different jurisdictions in implementing a workers' compensation scheme, and therefore should not be considered a limitation on human rights. Regardless of which jurisdiction they fall under, employees have access to a very comprehensive no-fault compensation and rehabilitation scheme for injuries arising out of, or in the course of, their employment. With respect, the Australian Work Health and Safety and workers compensation schemes are widely recognised as the best in the world. Improvements to the Comcare scheme will improve its operation and any suggestion that people will be left worse off, compared to both national and international standards are unsustainable.

For instance, the Government notes that in many respects the Com care scheme provides equal, if not higher, compensation to injured workers than many of the state or territory workers' compensation schemes. For example, under the Comcare scheme, weekly incapacity benefits (the

income replacement component of compensation) are paid at 100 per cent of an injured worker's normal weekly earnings for up to 45 weeks. For longer term incapacity the amount is reduced to between 70 and 75 per cent of normal weekly earnings and ceases at 65 years of age. State and territory schemes mostly pay 100 per cent of normal weekly earnings for the first 13 weeks, after which payments reduce in varying increments and at varying time intervals from the date of injury. Those reductions result in payments ranging from 65 per cent to 95 per cent of normal weekly earnings. Comcare's longer initial payment period means that it continues to be at least as generous as the other schemes in the longer term.

Another example relates to compensation for medical expenses. Under the Comcare scheme compensation is available as long as treatment is reasonably required, which is also the case in the Australian Capital Territory, the Northern Territory and South Australia. In the other schemes (as at 30 September 2012) limits are imposed on compensation for medical expenses:

- in New South Wales, the limit is \$50 000 (or a greater amount if prescribed or directed by the Workers' Compensation Commission)
- in Victoria, medical payments cease 52 weeks after the cessation of weekly incapacity benefits
- in Western Australia, medical payments are limited to \$59 510 (or in exceptional medical circumstances with a severe injury to a maximum of \$250 000); and in Queensland there is a five year limit on the payment of medical expenses.

Each scheme also pays for attendant care services, home help and other costs such as home modifications. All states either set fees, limit duration of payments, limit the amounts that can be paid or do a combination of these. Comcare has no limits on these costs, except that payment amounts are as Comcare determines are appropriate to the medical treatment of the compensable injury or illness.

Lump sum payments to compensate for permanent impairment also vary considerably across the schemes. As at 30 September 2012, lump sums for permanent impairment varied from a maximum of \$198 365 in Western Australia to a maximum of \$543 920 in Victoria. Comcare's permanent impairment maximum lump sum amount is \$231 831. Lump sum death entitlement payments to surviving dependants also vary across schemes: as at 30 September 2012 they ranged from a maximum of \$271 935 in Western Australia to a maximum of \$538 715 in Queensland, with the Comcare scheme amount being \$475 962. All schemes also separately pay funeral expenses, with the exception of Tasmania.

Based on components such as income replacement amounts, the periods for which they are paid and the reimbursement for medical and hospital costs, Comcare is one of the more generous schemes. On other scheme elements, while comparisons become more difficult because of the

different emphases placed on each element of each scheme, Comcare is in the middle or upper range of benefits paid.

To the extent that these variations could be considered potential limitations on the right to social security and the right to enjoy just and favourable conditions of work, they are nonetheless proportionate to the legitimate objective they are aimed at achieving. The objective aimed at is the reduction of the regulatory burden on multi-state employers by enabling them to access a single workers' compensation jurisdiction. Reducing the regulatory burden on multi-state employers will enhance other human rights, through enabling employers to reallocate resources to growing their enterprises (which promotes the right to work), and to developing practical work health and safety programs (which promotes the right to safe and healthy working conditions).

The regulatory burden caused by multi-state employers falling under several different workers' compensation schemes is caused, in part, by the numerous minor variations between the different state and territory schemes. This regulatory burden can only be reduced by allowing these employers to move to a single workers' compensation scheme. The changes are part of reforms which will reduce the regulatory impact on the economy by \$32.8 million each year for the next 10 years.²

Committee response

2.43 The committee thanks the Minister for Employment for his response and has concluded its examination of this bill.

2 See Appendix 2, Letter from Senator the Hon Eric Abetz, Minister for Employment, to Senator Dean Smith, 1 May 2014, pp 1-2.