Review of the Safety, Rehabilitation and Compensation Act

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SRC Act Review
Department of Education, Employment and Workplace Relations

5 November 2012
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Introduction


2. As outlined in Attachment “A” the Law Council represents the 16 Australian state and territory law societies and bar associations and the large law firm group (collectively referred to as the “Constituent bodies” of the Law Council) in this way, the Law Council effectively acts on behalf of some 56,000 Council lawyers across Australia.

3. The Law Council acknowledges the assistance of the Law Council’s Sections in the preparation of this submission, particularly, the Commonwealth Compensation Law Committee of the Federal Litigation Section and the Personal Injuries and Compensation Committee of the Legal Practice Section, which are comprised of specialists in the operation of compensation systems.

4. The rationale for the 2007 Amendments of the SRC Act was concern about the future liabilities of the scheme.

5. The Law Council considers that it is timely to review the SRC Act. Although there have been various amendments the SRC Act, it has largely retained the same structural entitlements since its enactment in 1988.

6. As noted in the Issues Paper, the SRC Act was enacted in 1988 to provide a statutory workers compensation scheme for largely white-collar government employees, predominantly under a single superannuation scheme (CSS), who largely enjoyed standard Commonwealth public sector pay and employment conditions. Since that time, the coverage of the Act has changed significantly, expanding to over 200 Commonwealth and State/Territory government agencies as well as a large number of national companies which self-insure under the SRC Act.

7. Today, 45 per cent of those covered by the scheme are private sector employees and there has been substantial growth in the nature of work performed by workers covered by the SRC Act, including a broad range of industries and employment conditions.

8. The SRC Act is principally administered by the Commonwealth’s primary public sector workers compensation insurer, Comcare. The Act provides for a range of benefits for injured workers, including ongoing income related benefits and reasonable treatment and care expenses for those injured in the workplace. Comcare manages the injured worker and his/her entitlements from sickness or injury to recovery, or until age 65 years.

9. When the SRC Act was enacted, it was stated that a key feature was “a greater emphasis on rehabilitation”\(^1\) than under its predecessor, the Compensation (Commonwealth Government Employees) Act 1971 (Cth).

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\(^1\) Explanatory memorandum of the Commonwealth Employees Rehabilitation Compensation Build 1988, page 8
10. The Law Council’s considers that there are increasing problems with the SRC Act, which stem from its attempt to cover a very different workforce and set of workplace arrangements. There is a need to remove some of the strictures of the existing SRC Act and revisit its underlying philosophy. Importantly, it is time to bring its entitlements structure into line with a modern workers compensation framework, which provides fair compensation and choice for those within the scheme, including less restrictive provisions governing redemptions and reasonable access to common law.

**Structure and principles**

11. The Law Council considers the structure of the SRC Act and underlying principles are reasonable and logical.

12. Under the Act, Comcare determines and manages compensation entitlements, with a secondary oversight role in relation to rehabilitation and rehabilitation providers. The Act provides that the central responsibility in this area is with the employing agency.

13. The SRC Act itself does not contain a statement of purpose or an objects clause, although section 69 sets out the functions of Comcare.

14. The Law Council would support amending the Act to include an ‘objects clause’. The Law Council considers that this might include objectives, such as prompt and fair determination of entitlement and provision of compensation for injured workers covered by the Act. The Law Council considers that section 69(a)-(da) provides a useful starting point for developing an objects clause, which would set down guiding principles for all administering authorities.

15. The Law Council also considers that Comcare should have a more direct role in rehabilitation, including facilitating or encouraging return to work and rehabilitation of injured workers.

**Eligibility issues**

**Definition of ‘employee’**

16. As paragraph 59 of the discussion paper observes, for 90% of employees the definition of employee is clear. However, for the remaining 10% (largely comprising independent contractors) there is some uncertainty.

17. The Law Council considers that, while consistency of definitions across legislative schemes dealing with similar subject matter is desirable, the primary objective must be clarity. The Law Council also notes there may be good reasons for different definitions under legislative schemes with a different purpose. For example, the duty owed by employers for occupational health and safety is broader than the duty imposed on employers under a statutory compensation scheme, given the former scheme is concerned with regulating workplace safety and protecting workers from injury, while the latter is concerned with compensating and rehabilitating workers after injury has occurred.
18. In a statutory compensation scheme a narrower, clearer definition of worker is important for determining coverage and premium or risk rating, as well as ensuring costs are ascertainable.

19. On balance, the Law Council considers that of the existing definitions set out under comparable legislation in all Australian jurisdictions, the comprehensive definition set out in ss 5, 8, 9 and 10 of the Accidents Compensation Act 1985 (Vic) is preferable and should be adopted under an amended SRC Act.

20. There may also be value in incorporating a “deeming provision” where subcontractors are engaged exclusively by an employer and, under the direction of that employer, are deemed to be employees.

Journey claims

21. Journey claims covering travel to and from work have been a feature of workers compensation schemes in Australia since their emergence in the early 20th century, with the adoption of the original English Acts.

22. The rationale at that time was that journeys to and from work did substantially increase risk of injury. Such coverage also provided a form of social insurance when only limited schemes for compensation and damages resulting from injury involving vehicles were available.

23. Approximately half of all jurisdictions allow journey claims, while two of those that do not allow journey claims (Victoria and Tasmania) operate no-fault motor vehicle accident schemes for at least the first twelve months. The Law Council considers that journey claims are a reasonable aspect of any comprehensive workers compensation scheme.

24. An appropriate journey claims provision should include:

   (a) compensation for injuries incurred during journeys starting from the boundary of the home to the boundary of the workplace and vice-versa;

   (b) compensation for injuries incurred as a result of authorised travel, such as journeys during work to work sites, training or treatment, or upon errands connected with employment; and

   (c) compensation for injuries incurred during authorised or ordinary breaks and recesses.

25. The Law Council notes that the need for coverage of journey claims may diminish if no fault arrangements are established for motor vehicle accidents in all jurisdictions. Until then, journey claims remain an important form of social insurance.

26. In addition, there is a powerful argument that journey claims ought to be included in circumstances where employment contributes to a real increase in risk to employees, including matters identified in sub-sections 6(1)(b)-(g) of the SRC Act.

27. Although it may well be covered by section 6(d) of the SRC Act, it is appropriate to identify “call out” journeys as falling within this principle and for these to be included.
Strokes and similar events

28. The Law Council notes that the Safety, Rehabilitation Compensation and Other Legislation Amendment Act 2007 (Cth) introduced a requirement that there be a closer contribution by employment to strokes or heart attacks that occur in the workplace.

29. The Law Council considers it appropriate that there be some proximity to or causal link with employment before a disease or injury is compensable.

30. The Law Council recommends adoption under the SRC Act of the approach set out in s 82(2B) of the Accident Compensation Act 1985 (Vic).

“Reasonable administrative action”

31. Currently, the SRC Act excludes injuries (including mental illness) that arise from “reasonable administrative action”. A danger with this exclusion, particularly in the government context, is that many actions can be interpreted as “administrative action”. The effect of this is to introduce a fault criterion – reasonableness – into a no-fault legislative framework.

32. The decision of the Full Federal Court in Commonwealth Bank of Australia v Reeve² appropriately limits this area of exclusion and the Law Council considers there is no justification in expanding it under a no-fault system.

33. The Law Council considers that a significant problem has arisen as a result of Hart v Comcare³. Following Hart, the relevant test is whether the administrative action is merely a “contributing factor”. If it is found that the reasonable administrative action was a contributing factor, the injury is not compensable. This implies that, even if the relevant administrative action is only a minor factor contributing to the injury, the injury may be non-compensable on that basis.

34. The Law Council notes that the majority view among members of the Law Council’s relevant committees is that the exemption should apply only if the administrative action can be shown to be the predominant contributing factor. However, a minority view is that, at the very least, the exemption should be applicable only if the administrative action is a significant factor contributing to the injury. In this regard, the Law Council notes that workers compensation systems are intended to be beneficial schemes, designed to compensate people who are injured in the workplace. Employers should not be permitted to avoid their obligations to compensate injured workers simply because administrative action was taken, which may have exacerbated or contributed to a workplace injury, which is more appropriately attributable to other factors or incidents.

35. A more appropriate approach, particularly in instances where the psychological condition or other disease is the result of many causal factors, is for the competing factors to be weighed and, if the administrative action is found to be the predominant factor and it proves “reasonable”, then the exclusion will be triggered.

36. This is consistent with the legislative approach in other state and territory workers compensation jurisdictions.

² [2012] FCAFC21
³ [2005] FCAFC16; arising particularly from interpretation of the phrase “as a result of” and as interpreted in subsequent cases such as Silk v Comcare [2012] AATA638
37. The Law Council notes that the finding should not be that the employee did not suffer injury in these circumstances, rather it should be stated that the employee did not suffer an injury in compensable circumstances.

**Incapacity payments**

38. The Law Council notes, in relation to the comments in paragraph 82 of the Issues Paper that there are likely to be two reasons behind the amount of litigation in relation to calculation of incapacity payments. The first is an unfortunate series of early pronouncements which were ultimately overturned. The second is consistent with the observation in paragraph 81 of the Issues Paper, namely that significant changes to workplace employment conditions over the years have made the assessment of earnings within the existing framework of the SRC Act more difficult.

39. Determining incapacity payments is also made more challenging in relation to potential future earnings given the need to take into consideration anticipated promotions and salary increases over time.

40. Nevertheless, normal weekly earnings should be referrable to pre-injury work and hours and this should also continue to include earnings in other employment, in accordance with section 8(3) of the SRC Act.

41. The existing formula under the SRC Act is a reasonable method to calculate future incapacity entitlements.

42. There is however an anomaly in respect of allowances. Section 8(1) of the SRC Act permits allowances to be considered as part of the calculation of Normal Weekly Earnings (NWE), while Section 8(6) provides for this to be increased in certain circumstances. However, the Act does not provide for any change should there be an increase in the amount of the allowance since the initial calculation of NWE. The Law Council considers this is an oversight that should be corrected.

43. Although the Law Council does not dispute the correctness of the decision in *Comcare v Heffeman*\(^4\), the decision has had unfortunate consequences. For example, where an employee has been re-deployed to a position in which the standard hours available are less than the pre-injury hours, then pursuant to that rehabilitation process, the injured employee should be entitled to a top-up of 100 per cent of their pre-accident earnings.

44. The Law Council also notes that, given the rationale under the SRC Act for weekly incapacity benefits ceasing at 65 years is based on the statutory retirement age, it follows that this coverage should be increased when the retirement age increase to 67 years. The Law Council considers section 23(1A) of the SRC Act remains appropriate, however the threshold of 63 years should be replaced with 65.

**Superannuation**

45. Commonwealth compensation schemes are the only schemes in which superannuation payments are taken into account in deducting incapacity entitlements for injured workers.

\(^{4}\) *Re: Zarb v Comcare* (1997) 48 ALD 718

\(^{5}\) [2011] 196 FCR 494
46. The Law Council’s view is that superannuation payments should not be taken into account in any way in the calculation of benefits. Superannuation contributions are a statutory requirement that the Federal Parliament imposed on all employers many years ago. The policy is simple and straightforward. Australia has an aging population and the burden of funding reasonable Social Security payments to those who are retiring or likely to retire in the next 15-20 years will be substantial. Accordingly, the Australian Government has sought to ensure retirees can enjoy a reasonable lifestyle without creating a major burden for Australian taxpayers.

47. The Law Council submits that the scheme should provide financial incentives for injured employees to roll over or otherwise preserve their superannuation for retirement and that where this has occurred then it should not affect incapacity entitlements. Alternatively, consideration should be given to requiring employers to continue to make superannuation contributions to incapacitated workers for the duration of their incapacity, or until they reach retirement age.

48. Although the 5% deduction following invalidity retirement may have had some logic in 1988, work practices and superannuation contributions entitlements are so diverse that by 2012 this deduction is no longer justified.

49. No Australian workers compensation schemes make proper provision for loss of superannuation contributions. Employers are required to make contributions whilst the employee remains in employment but there is an issue as to what should occur if a worker continues to be incapacitated for work.

50. The Review of the Accidents Compensation Act 1958 (Vic) in 2008 recommended that superannuation entitlements be paid by the authority alongside weekly incapacity benefits at the mandatory contribution rate of 9%, directly to the injured worker’s superannuation fund. This was considered to reflect community expectations and the overarching government policy of enforced retirement savings.

Redemption

51. The Law Council considers the provisions in respect of redemption under the SRC Act require complete overhaul.

52. Section 30 of the Act provides for very limited circumstances in which an injured worker is able to redeem future entitlements as a final lump sum. As a result, those in receipt of only a very small weekly benefit, do not have the opportunity to move out of the scheme.

53. The Law Council considers there must be a point where there are administrative savings to be made and the injured worker no longer wishes to be “cared” for by the administering authority. This should be acknowledged in any modern compensation scheme.

54. In the Law Council’s view the removal of commutation from the NSW Workers Compensation Act 2001 was a significant contributing factor to the reversal of that scheme’s financial position.

55. However, it is important, given the imbalance between the bargaining position of the administering authority and the injured employee, that there be proper safeguards to

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6 The Commonwealth schemes make provision for 5%, which was the relevant contribution in rate in 1988

ensure any redemptions are determined fairly and reasonably. The Law Council suggests a two tiered approach:

(a) The first tier would be up to a weekly amount of $150.00 (subsequently indexed) and would operate as section 30 currently does – namely that the administering authority would be able to automatically redeem, and the injured employee would have the right to challenge that decision. The same preconditions would apply.

(b) The second tier would apply to amounts over $150 per week, whereby an injured employee should be able to redeem entitlements on reaching agreement with the administering authority, on the basis that:

(i) his/her condition had stabilised and was likely to continue at that level;

(ii) at least 6 months has passed since the date of injury:

(iii) the administering authority is satisfied that the injured worker has received proper financial and legal advice as to the implications of the redemption; and

(iv) it is appropriate in the circumstances to do so.

56. For the reasons outlined above, it would be appropriate that redemption of entitlements include payment of medical and other expenses.

57. This is also important in terms of the tax treatment of any redemption. Under other schemes, redemptions or commutations of all entitlements are not taxed because they are regarded as mixed income and non-income. However, the Australian Taxation Office has traditionally taxed redemptions under the SRC Act which has the effect of placing all income within one financial year and attracting tax that would not otherwise be payable.

58. The Law Council submits that redemptions provide an important “safety valve” for the resolution of disputes and issues between the parties. A major disadvantage of the SRC Act compared to other legislative schemes is that it does not afford employees and employers the opportunity to resolve disputes through lump sum settlements that reflect future entitlements, in circumstances where the employee has received independent financial and legal advice as to the reasonableness and consequences of a lump sum settlement.

**Common law entitlements**

59. Currently the SRC Act provides very limited access to common law benefits. It is one of the most restrictive schemes in the country in terms of common law rights.

60. While workers compensation provides an insurance safety net without recourse to fault, injured persons should not lose their rights to sue at common law simply because they are an employee. The Law Council considers that employees covered by Comcare or self-insurance arrangements under the SRC Act enjoy significantly fewer rights than people under other schemes when they are injured as a result of the negligence of their employer.

61. Common law entitlements also provide an incentive for safety as negligent employers face increased premiums unless poor work practices are remedied.
62. As noted in the Issues Paper, the cap on general damages under the Comcare scheme has not been revised in 24 years. Within that period, Australia has gone through substantial change in terms of costs of living and average weekly earnings. It is unfathomable that a cap set in 1988 could be considered a reasonable assessment of general damages in 2012. Caps applicable under comparable State and Territory schemes are substantially higher and demonstrate that the SRC Act is out of step in relation to common law benefits.

63. The Law Council notes that ‘hybrid’ compensation schemes are among the best performing schemes in Australia and generally outperform schemes which restrict common law entitlements, at every level.

64. For example, in 2008 the New Zealand Accident Compensation Scheme announced unfunded liabilities of $23.175 billion, roughly equivalent to 17.1 per cent of New Zealand’s Gross Domestic Product. Such a deficit would be considered calamitous in the Australian context, with obvious political ramifications. In New Zealand, this has led to significant increases in compulsory contributions to its various injury compensation ‘accounts’, as well as moves to further limit benefits to injured people.

65. Similarly, the South Australian WorkCover scheme, which does not allow any access to common law, recently declared unfunded liabilities of almost $1.4 billion, notwithstanding that SA WorkCover charges employers the highest compulsory contributions in the country. WorkCover SA’s financial position has in fact worsened despite substantial cuts to workers entitlements implemented in 2010.

66. In contrast, Queensland WorkCover, which allows virtually unrestricted access to common law, is among the best performing schemes in the country, with the second-lowest premiums, the lowest disputation rate, highest assets to liabilities ratio and is among the better performing schemes in terms of return to work outcomes.

67. The Law Council considers any assertion that common law compensation has a deleterious impact on health and recovery outcomes is unsustainable, having regard to the actual performance of existing schemes.

68. The Law Council considers that people who are negligently injured should be entitled to access common law compensation under all heads of damages. Removal of common law rights impedes access to justice for people rendered disabled by the negligent or wrongful actions of corporations and/or individuals. In addition, schemes which disadvantage participants by removing or limiting existing common law rights shift the cost burden from the wrongdoer and their insurer to the taxpayer. This is unacceptable at any time, but at a time of increases in demands on public health and related infrastructure due to demographic trends and ageing, it is unaffordable.

69. The Law Council opposes thresholds of permanent impairment to determine whether a person is entitled to access the common law, because they inevitably produce injustice in terms of the effect of the injury on different individuals; and provide a disincentive to recovery.

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8 WorkCover SA, Annual Report 2011-12
9 Workplace Relations Ministers Council, Comparative Performance Monitoring Report, 14th edition, October 2012, Commonwealth of Australia, Chapters 3 and 4
70. As well as being a matter of justice, the common law provides a mechanism for the resolution of many potential long-tail claims, which is important to ensure that the scheme remains financially viable.

71. It is also important to recognise that the common law encourages safer work practices by providing an incentive for both employers and employees to take reasonable care. Common law liability for workplace accidents provides an important incentive to optimise workplace safety standards. This is clearly demonstrated by the fact that the New Zealand Accident Compensation Scheme deals with two-and-a-half times the number of serious workplace injuries than the Australian average; while in 2010-11, New Zealand had almost as many compensated workplace fatalities as Australia, \(^{10}\) despite having roughly one-fifth of the working population and a substantially smaller proportion of employees working in high-risk industries.

72. The Law Council submits that:

(a) The cap on general damages for permanent impairment under the SRC Act should be raised substantially and brought into line with the substantially greater caps that apply under the Victorian Accident Compensation Act;

(b) The SRC Act should be amended to ensure that employees who are negligently injured by their employer, and suffer permanent disabilities as a result, are able to sue at common law for lost earnings and past and future treatment and care.

**Rehabilitation issues**

73. The Law Council agrees that effective rehabilitation and return to work should be the primary objective for injured workers, their employers and administrative authorities.

74. The Law Council believes that the SRC Act should have a clear definition of suitable employment, given Commonwealth agencies and licensees have a responsibility to facilitate rehabilitation of injured workers. However, as a practical matter, the current restrictive definition under the SRC Act means that some permanent employees may be being denied rehabilitation opportunities that would assist in their return to work. For example, the present definition may not include a work trial or employment by another employer which has other suitable work opportunities available. The Law Council supports a more flexible approach in terms of the development of rehabilitation plans.

75. Although early notification is important for early intervention, there are a number of reasons why this may not occur. For example: the employee may be unaware of the need to do so; they might fear of the stigma of lodging a compensation claim; or may simply be too unwell to do so.

76. Employers are in a position to monitor staff absences, which are indicia of a possible claim. Although this is common amongst many employers, a process of early intervention (for example, where the employee’s agency contacts an employee who is away (e.g for over two weeks) to enquire as to their well-being) may assist in identifying the need for early intervention, even if it was only an inquiry at that stage.

\(^{10}\) Ibid, Chapter 2
77. More broadly, the Law Council considers that it is worth investigating a mechanism for provisional acceptance of an incapacity claim, such that payments can be made without admission for treatment and incapacity. In circumstances where a claim is subsequently rejected, sick-leave could be used in respect of incapacity payments but otherwise these payments, including payment for treatment, would not be recoverable. The claimant might be obliged to lodge these expenses with Medicare. Although this might create a greater cost impost for administrative authorities, the benefits of early intervention in return-to-work is likely to outweigh this cost. This approach, without any mechanism for recovery, has been adopted under the Workers Compensation Act 1951 (ACT).

78. It is difficult to see how Comcare can play an active role in this early intervention, except indirectly through guidelines. However, the Law Council would support Comcare undertaking a more significant inspectorate-type role as well as an educational role in ensuring rehabilitation standards given the variable experience of rehabilitation assistance between government agencies and licensees.

79. Further, Comcare should have a more active role in intervening where there is a dispute in the return to work process, if necessary “umpiring” those disputes.

80. The Law Council agrees with the sentiments expressed in paragraph 130 of the Issues Paper and believes that Comcare should become the rehabilitation authority for ex-employees. It should have the capacity to initiate rehabilitation programs for each employee who has separated from their employer.

81. Although there may be challenges associated with employees returning to pre-injury employment, the concept of employers being obliged to provide, and injured employees being obliged to accept, suitable employment is a key incentive in promoting rehabilitation.

Permanent impairment

82. The Law Council is opposed to the use of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (the Guides) in determining levels of impairment for compensable purposes. Assessment of WPI thresholds using the Guides is arbitrary and regularly operates unfairly in respect of impairments which affect different people in different ways. The use of a whole person level of impairment inevitably means that small but significant losses (e.g. to finger and toes, hearing or eyesight) translate to negligible “whole person impairment” calculations.

83. This arbitrariness is exacerbated by the use of the AMA Guides, which states explicitly in the preambular paragraphs of each and every edition that:

“...the Guides is not to be used for direct financial awards nor as the sole measure of disability. The Guides provides a standard medical assessment for impairment determination and may be used as a component in disability testing.”

84. One of the most damaging aspects of WPI thresholds has been the rules employed locally in various jurisdictions to further limit access to compensation. For example, rules which do not permit different impairment assessments to be accumulated. Thus, in some cases an assessment of 7% impairment to the lower spine and 8% impairment to the right arm will not overcome a 10% WPI threshold. Further, it is not

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uncommon for schemes that use the Guides to prohibit accumulation of WPI assessments for physical and psychological impairment. Such rules are arbitrary and unfair to those who suffer multiple injuries, which may have a debilitating cumulative impact.

85. Each addition of the Guides has become increasingly technical and complex in attempting to put different impairments on a comparable continuum, so that physicians can “converse” on similar terms. The Guide attempts to categorise conditions that rarely, if ever, are a product of workplace injuries and has a poor focus on some injuries that are more likely to be incurred in the workplace (e.g. spinal injuries and their sequelae). While the purpose of the Guides is diagnostic and standardising, the Guides do not set common points that might be used for setting thresholds. The Law Council also notes that the Guides are the workings of medical specialists in the United States. They provide a useful reference point, however the clinical debates of American doctors ought not to be the basis for compensating injured Australian workers.

86. Ultimately the better option is for there to be an Australian Guide designed for compensation purposes, which is fair and intelligible to doctors, lawyers, Comcare and injured workers. This would seem consistent with the approach that is intended to guide Comcare as set out in section 72 of the SRC Act. The Law Council supports Comcare’s use of a “stand-alone” guide though it is noted that this remains heavily dependent on the AMA Guides 5th edition. The weakness of this approach in respect of spinal injuries is highlighted in Broadhurst v Comcare.  

87. The Comcare Guide is unnecessarily prescriptive in respect of the use of some of its tables, for example tables 9.7 and 9.14. This is inappropriate, in what is intended to be “beneficial” legislation.

88. Whatever the legislative intent, there is logic and fairness in allowing impairments from one accident or injury to be combined.

89. In previous submissions by the Law Council to Comcare regarding the Permanent Impairment Guide, the Law Council has indicated that there is value in examining a 5% threshold, subject to considering the actuarial effects of this change. The Law Council remains of this view.

**Appeals and other processes**

90. The Law Council does not support the use of medical panels to determine eligibility for compensation. In particular, a difficulty will arise if a medical panel is required to determine an issue that also involves the a legal test under the SRC Act. If medical panels are to be used under the SRC Act, they should be utilised only to determine medical issues and not to determine issues that involve matters of legal interpretation.

91. It would be appropriate to have a right of appeal from the determination of a medical panel.

92. A key complaint with respect to appeals is the time limits of the decision-making process under the SRC Act, particularly in respect of decisions by Comcare.

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12 [2011] FCAFC 34
93. The Law Council accepts that there has to be a balance between investigating claims and acceptance. The Law Council also accepts that disease cases are more complex and require greater time.

94. Although amendments to the regulations under the SRC Act will provide time limits, it is the Law Council’s view that, unless there is some consequence flowing from the failure to comply, it is difficult to see how setting aspirational goals will actually impact in practice.

95. A similar criticism is made of the timeliness of the decision-making processes in the Administrative Appeals Tribunal. The Administrative Appeals Tribunal has established a practice direction in relation to compensation matters. The SRC Act is unlikely to impact upon the conduct and practice of the Administrative Appeals Tribunal.

96. Nevertheless, it is a matter of the “culture” surrounding the SRC Act and this can be improved. In this respect there are clearly times when an injured employee may be suffering hardship as a result of an absence of income and/or treatment in respect of injuries and there needs to be some “fast-track” approach to resolve these issues with a minimum delay.

Other issues

97. The Law Council considers it is appropriate that, where claimants have suffered loss as a result of oversight or maladministration by Comcare, they should be able to make a claim under the Compensation for Detriment Caused by Defective Administrations scheme.
Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its constituent bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council’s constituent bodies. The Law Council’s constituent bodies are:

- Australian Capital Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 56,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the constituent bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12 month term. The Council’s six Executive are nominated and elected by the board of Directors. Members of the 2012 Executive are:

- Ms Catherine Gale, President
- Mr Joe Catanzariti, President-Elect
- Mr Michael Colbran QC, Treasurer
- Mr Duncan McConnel, Executive Member
- Ms Leanne Topfer, Executive Member
- Mr Stuart Westgarth, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.