



**Law Council**  
OF AUSTRALIA

*Federal Dispute  
Resolution Section*

**18 December 2024**

Independent Panel  
C/- SRC Act Review Secretariat  
Department of Employment and Workplace Relations  
Canberra ACT 2601

By email: [srcactreview@dewr.gov.au](mailto:srcactreview@dewr.gov.au)

Dear Independent Panel

**Review of the *Safety, Rehabilitation and Compensation Act 1988 (Cth)***

This correspondence is being provided on behalf of the Commonwealth Compensation and Employment Law **Committee** of the Federal Dispute Resolution Section of the Law Council of Australia.

The Committee thanks the Independent Panel conducting the review of the *Safety, Rehabilitation and Compensation Act 1988 (Cth)* (**SRC Act**) for the opportunity to participate in the consultation, which occurred at the Department of Employment and Workplace Relations on 13 November 2024.

As discussed at that consultation, the Committee now provides this additional response to the public consultation issues paper dated 21 October 2024 and the consultation itself. This additional response is intended to prevail to the extent of any inconsistency between this additional response and the remarks made on behalf of the Committee on 13 November 2024.

The Committee understands that the Independent Panel would appreciate additional feedback in relation to the following questions.

1. What should be the extent of any provisional acceptance of liability pending determination of a claim? For example, should there be a system comparable with the DVA White Card?
2. Should normal weekly earnings (**NWE**) be adjusted to reflect an employee's receipt of higher pay or wages post-injury?
3. How should any new legislation be structured? For example, should any new legislation follow the process of a claim for compensation?
4. Should there be a medical panel to provide guidance to determining authorities regarding whether an employee has suffered an injury or disease?
5. Should there be harmonisation between the SRC Act and the *Work Health and Safety Act 2011 (Cth)* (**WHS Act**)?

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6. Does the SRC Act need to be changed to “address” the outcome in *Comcare v PVYW* (2013) 250 CLR 246?
7. Should the SRC Act have an objects clause? If so, what should be included in such a clause?

The Committee will address each of the above questions in turn.

**1. What should be the extent of any provisional acceptance of liability pending determination of a claim?**

As alluded to on 13 November 2024, the Committee considers that the Comcare scheme should provide for provisional payments. The “length and amount of any such payments” should be as follows. First, the “length” should be up to the date of the initial determination of liability in answer to a claim for compensation. Secondly, the “amount” should be based on the employee’s NWE. In the event that liability is denied, the provisional payments should be recovered from the employee’s accrued leave. In the event that the employee has no accrued leave, the amount of the provisional payments should be recovered from the employee as a debt comparable with the present situation under ss 114–114D of the SRC Act.

The Committee considers that the above approach may have two essential salutary effects. First, it should encourage the timely determination of claims for compensation. Secondly, it should ensure that an employee is given adequate wage cover pending determination of the claim. The risk of employees lodging spurious claims should be minimised by the capacity for the employer to recover the amount of any provisional payments from the employee in the event liability is denied. In fairness, employees should be informed that provisional payments will be so recovered at the time they complete their claims for compensation.

The Committee has considered whether there should be a system comparable with the DVA White Card. The Committee was not persuaded that a system comparable with the DVA White Card would be appropriate to a Commonwealth workers compensation scheme. In that regard, the Committee considers that the Medicare scheme usually provides adequate cover for essential medical treatment pending the determination of a claim in an employee’s favour.

**2. Should NWE be adjusted to reflect an employee’s receipt of higher pay or wages post-injury?**

The Committee was not persuaded that NWE should be adjusted to reflect an employee’s receipt of higher pay or wages post-injury in a manner that is different from the current provisions of the SRC Act. However, the Committee would welcome the modernisation of those provisions, such as ss 8 and 9, to ensure that they are more reflective of contemporary public sector and private sector employment environments and the working conditions of contemporary Australian employees.

**3. How should any new legislation be structured?**

The Committee would welcome a restructuring of the legislation to enable it to follow the process of a claim for compensation. However, the Committee would not welcome a restructuring of the legislation for the mere sake of restructuring it. In that regard, Part V and Part VI of the SRC Act largely follow the process of a claim for compensation. As such, the Committee considers that only minor changes would be required to those provisions.

In that latter regard, to ensure that employees access the benefits of the legislation as soon as possible, and that employers can appropriately manage their employees and any relevant liabilities, the Committee recommends that s 54 of the SRC Act be amended to include an obligation comparable with the current obligation in s 53 of the SRC Act. In other words, claims for compensation should be made as soon as practicable after an employee suffers a work-related injury to ensure that timely action may be taken to minimise the duration and extent of any work-related injuries.

**4. Should there be a medical panel to provide guidance to determining authorities regarding whether an employee has suffered an injury or disease?**

The Committee does not oppose the introduction of a medical panel to provide guidance to determining authorities regarding whether an employee has suffered an injury or disease. However, the Committee would prefer to receive further detail about the composition of any such medical panels, and to understand how it is intended that they be used, before reaching a concluded view on this topic. For example, are such medical panels likely to resemble the Repatriation Medical Authority? Are such panels likely to be utilised on a case-by-case basis? In the latter regard, it is conceivable that such panels could unduly add to the burden and expense of the scheme if they were to be utilised on a case-by-case basis where, for instance, a multidisciplinary approach is not warranted.

**5. Should there be harmonisation between the SRC Act and the WHS Act?**

The Committee would welcome harmonisation between the SRC Act and the WHS Act. However, the Committee would prefer to understand how any proposed changes are intended to operate before expressing a concluded view on this topic.

**6. Does the SRC Act need to be changed to “address” the outcome in *PVYW*?**

The Committee considers that the SRC Act does not need to be changed to “address” the outcome in *PVYW*. The outcome in that case was to explain the principle in *Hatzimanolis v ANI Corporation Ltd* (1992) 173 CLR 473 at 482–485. There is no need to change the legislation to “address” that longstanding principle, which has been followed by numerous courts and tribunals over many years.

**7. Should the SRC Act have an objects clause? If so, what should be included in such a clause?**

The Committee was not persuaded that the SRC Act should have an objects clause. Such clauses do not always have the desired effect. However, if an objects clause were to be contemplated, the Committee would recommend that it reflect the short title of the SRC Act. In that regard, there should be an emphasis, in the first instance, on safety for employees, followed by their rehabilitation, followed by their

compensation in appropriate cases. Ultimately, the aim should be to restore employees to the capacities they enjoyed before any work-related injury or, if that cannot be achieved, to the best capacity achievable after such injury.

The Committee would welcome the opportunity to discuss any of the matters raised by the issues paper further, including any proposed changes to the legislation which might represent a departure from the current scheme.

Please contact Chelsea De Silva, Executive Officer, Federal Dispute Resolution Section, [REDACTED] for any further consultation.

Yours sincerely



**Peter Woulfe**  
**Chair, Federal Dispute Resolution Section**