Finance Sector Union Submission
Senate Committee
Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015

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Comment from Finance Sector Union of Australia

Introduction

The Finance Sector Union (FSU) is the trade union representing employees working in the banking, finance and insurance sector. This industry consists of around 420,100 employees nationwide[1].

The FSU has extensive experience working with workers who are covered by the Comcare scheme. Eight of the current thirty three licensees in the scheme are employers of FSU members, these include National Australia Bank, National Wealth Management, Commonwealth Bank, Colonial Services, Commonwealth Insurance, Commonwealth Securities, Bankwest & Reserve Bank. In 2013-2014, finance workers made up 34% of the workers employed by licensees in the scheme, (53,076 of a total 156,718) [2]

The finance industry has a relatively low rate of workers compensation claims lodged compared with other industries. FSU believes that published figures are unrepresentative of the actual injuries in the industry, with regular reports from injured members of being actively discouraged from pursuing a claim. *"I didn't proceed with my claim. I would like to state the case manager/HR manager tried to dissuade me in a number of phone calls, discussing how difficult it would be for my colleagues in the office"* (FSU member survey, April 2015)

The FSU supports the submission put forward by the Australian Council of Trade Unions (ACTU), and rather than replicating the ACTU submission, we have focused our attention on the elements of the Bill where we can make an effective contribution based on the experiences of our members working in the finance industry. In the preparation of this submission we have used information sourced as follows:

1. Review of member cases where the union has provided assistance in these matters (case notes);
2. Online survey of members who have had recent experience with the scheme, (conducted April 2015);
3. Telephone interviews with members;
4. Information from licensees;
5. The SRCC Annual report 2013-2014.

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[1] ABS, *Labour Force Australia: Detailed, Quarterly, Nov 2013,* (2013), http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6291.0.55.003Nov%202013?OpenDocument Viewed 24/01/2014

[2] SRCC & Comcare Annual report 2013-2014, p177

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Background

The FSU welcomes the opportunity to make a submission to this inquiry into the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 as the FSU believes that the fair treatment of injured workers is intrinsic to individual, workplace and societal well being.

While this legislation purports to be about improving the scheme, the "improvements" appear to be around improving profits and control of large employers while cutting benefits to injured workers.

FSU has some serious concerns about some of the underlying assumptions upon which the changes are proposed, in particular those that go to the financial viability of the scheme and the idea that injured workers are in some way taking advantage of the system.

1. Financial viability of the scheme

One of the key arguments given for cutting the income and medical expenses payable to injured workers is around the ongoing financial viability of the scheme. The Comcare scheme includes both premium payers and licensees. Licensees currently make up 43% of workers covered by the scheme.[3] If the Safety, Rehabilitation & Compensation Legislation Amendment Bill 2014 is passed, it is expected that a further 80 large organisations will join the scheme as licensees[4], making employees of licensees the vast majority of those covered by this legislation.

Licensees determine and manage claims lodged by their own employees, and bear the risks and costs of workers compensation claims. They do not impact on the financial viability of the scheme. What these changes will do is redistribute income and medical expenses that would have been received by injured workers back to some of the largest and most profitable employers in the country.

2. That workers are taking advantage of the workers compensation system

This bill is designed to penalise injured workers, with unsubstantiated allegations of workers taking advantage of the system being used as the premise for substantial cuts. This attitude is clearly displayed in the second reading speech, by Mr Hartsuyker with comments such as:

- *loopholes in the legislation that allow people to take advantage of the scheme*;

[3] Department of Employment, Regulation Impact Statement, Safety, Rehabilitation and Compensation Amendments (Improving the Comcare scheme) Bill 2015, March 2015, p12
[4] Department of Employment, Regulation Impact Statement, Safety, Rehabilitation and Compensation Amendments (Improving the Comcare scheme) Bill 2015, March 2015, p14

- *Systemic incentives to remain on workers compensation for extended periods;* and
- *those who refuse to utilize the scheme's resources to get better and return to work will no longer be able to do so with impunity*

These kinds of comments clearly illustrate the anti worker ideology that sits behind the proposals.

As this submission illustrates, the proposed amendments to the SRC Act outlined in the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 will:

- Impact the emotional and financial well being of individual workers and their families;
- Exclude large groups of injured workers from the workers compensation system;
- Restrict workers access to a fair review process; and
- Give employers power to direct injured workers to do things contrary to the advice of their treating medical practitioner.

The FSU believes that this legislation should be rejected in its entirety.

Schedule 1: Eligibility for Compensation and Rehabilitation

Schedule 1 of the 2015 SRC Bill substantially restricts support for injured workers and their dependents, by removing the capacity to claim workers compensation for a wider range of workplace injuries.

The regulatory impact statement talks about an increase in the numbers of certain types of injuries – particularly psychological injuries. Rather than focusing on the reasons that there is an increase in these injuries (e.g. the proliferation of bullying and harassment in the workplace), and looking at ways to identify and mitigate against the risk of employees sustaining these injuries, this legislation will remove the capacity for workers to receive the support they need when these injuries occur. This will simply transfer the costs involved in injuries from the employer to the injured worker, income protection insurance (for those who have it) and the social security system.

The current SRC Act already contains a number of exclusionary provisions, with data provided by the employers in our industry indicating that of the claims for workplace injuries submitted, between 26-44% of these are declined as not compensable under the SRC Act.

Proposed exclusionary provisions

Reasonable management action

Workplace psychological injury is an area of increasing concern. Injuries have far reaching consequences for workers who often experience social isolation and the breakdown of important personal relationships in addition to the incapacity to work.

The current SRC Act already has exclusions that apply to psychological injuries, so while it might be clearly demonstrable that a person has suffered a psychological injury, and that the injury is caused by work, if that injury is deemed to have been caused by "reasonable administrative action" the injury is not compensable. This current exclusion removes the majority of workplace psychological injuries from access to compensation and rehabilitation.

Analysis of AAT decisions around workers compensation in the finance industry found that 70% of the matters excluded from access to workers compensation related to psychological injury.

This Bill attempts to undo a Federal court decision that separates the concept of administrative action from management action (Reeve vs CBA), with employer groups arguing that they should be able to run their businesses as they see fit without concern that this may lead to a compensable claim.

Mr Reeve was a CBA branch manager. A series of events and reporting requirements, made him feel embarrassed and humiliated and led to a major depressive disorder and attempted suicide. These events included moving key staff members with no consultation or discussion, comments in meetings in front of peers, and being held publically accountable for outcomes over which he had no control or influence. The court determined that his injuries were caused by management action rather than administrative action and his claim was therefore not excluded.

The Bill removes the current "reasonable administrative action carried out in a reasonable manner" and replaces this with the words "reasonable management action taken in a reasonable manner" OR the employees anticipation or expectation of reasonable management action being taken.

It then expands on the list of items that could be considered reasonable management action. It keeps:

- Appraisal of an employee's performance (removes the word reasonable)
- Counselling action whether formal or informal (removes reasonable)
- Suspension action (removes reasonable)

- Disciplinary action (removes reasonable)
- Anything done in connection with the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment (removes reasonable)

And also adds:

- An organisational or corporate restructure;
- A direction given for an operational purpose or purposes;
- Anything done in connection with the 2 items above

Organisational or Corporate restructure

Financial services organisations are well known for their ongoing organisational and corporate restructures. Some of these are handled particularly poorly and have led to members suffering psychological injury. The decision to undertake an organisational or corporate restructure should not absolve the employer of the responsibility to provide a workplace that is safe and will not cause psychological injury to their workforce. If workers are injured through the process they should receive the support they need through workers compensation.

A major bank commenced a restructure, including offshoring of jobs. The process took approximately 12 months – during this time people did not know whether their position would be impacted or when this would occur. People were expected to cooperate by training the overseas workers who would be doing their jobs in Bangalore at the end of the process and to compete with long term workmates for a finite number of positions. There was a total lack of respect shown for employees on the impact that this process could have on their mental health.

A direction given for an operational purpose

The new provision to exclude injuries that result from "a direction given for an operational purpose or purposes" is incredibly broad. It could cover any injuries (either physical or psychological) which are the result of any direction for an operational purpose and anything done in connection with that direction.

Designated injuries

Schedule one introduces the concept of designated injury. These are injuries that will generally be excluded from eligibility for compensation. Designated injuries will include:

- An injury to the heart or blood vessel associated with the heart;

- An injury to the brain or blood vessel associated with the brain
- Injury to intervertebral disc or associated intervertebral disc
- Injury prescribed by regulations – these are as yet unseen and could include any kind of injury

Designated injuries will have a different test applied to determine if work has contributed to a significant degree, and appear to be an attempt to blame individuals for workplace injuries. Some of the matters to be considered include:

- The state of the employee's physical and psychological health before the injury or aggravation
- Any disposition of the employee towards the injury or aggravation
- The probability that had the worker not been employed they would have had the same issue at about the same time anyway
- Any activities of the employee not related to employment
- If injury is attributable to an employees belief or interpretation of a situation – whether they had reasonable grounds to have that belief or interpretation
- Any other matters affecting the employees physical or psychological health

Workplaces should be safe for all employees. Introducing the concept of "designated injuries" will lead to greater disputation and disadvantage for injured workers and will redistribute the cost associated with these injuries from large employers to the individual and the community.

Compensation standards relating to ailments

The Bill allows Comcare to introduce "compensation standards" in relation to particular ailments that will set out the factors that must exist for a worker to have that ailment and be eligible for workers compensation.

If the worker does not have all the factors they are taken to not have the ailment, or an aggravation of the ailment, regardless of the view of their treating doctor.

Schedule 2 – Rehabilitation

Rehabilitation and return to work is a vital part of any workers compensation system. Key elements of a good rehabilitation system include effective consultation with the injured worker and their treating doctor, and identification of suitable duties to ensure a safe return to work does not exacerbate the workplace injury.

FSU members report that return to work processes are often problematic and see injured workers bullied and required to do things that are not recommended by their treating doctor.

M had a fall at work, with her injury requiring a major shoulder operation. Her case manager is insisting on attending all of her doctor and specialist appointments which is making her very uncomfortable. Her surgeon says she should be seated at work and provided with a footstool, this has been ignored and she is required to stand all day.

The whole experience was very poorly managed. My manager at the time pressured me to return to work even though the new equipment had not arrived, because "she was losing out on performance for the team because I was an FTE but giving her zero output on her productivity reports".

My manager did not take my condition seriously, did not provide modified duties as per certificate of capacity. I bought this up with her on several occasions and was fobbed off. I said I had too much work and was told so did everyone else. My targets were never reduced and when I raised this I was advised that workplace targets don't get changed just because of me. I was made to feel a burden, that I had to justify myself constantly. Also it was very difficult to get postural changes and rest breaks asper my certificate of capacity. I was told that everyone needs their breaks and I just have to fit in with staff and wait until there are no customers.

This schedule provides employers with complete control over the workplace rehabilitation process, and will see an increase in the additional stress faced by injured employees as they return to work.

Workplace rehabilitation plans

Under section 36, the employer can decide whether there will be a rehabilitation plan or not. The worker can request a plan, but the employer can decline. All penalties in this schedule apply to workers who do not follow the plan, with no penalties for employers who fail to provide suitable duties or effectively engage in the rehabilitation process.

Plans can be written with no input from the injured worker or their treating doctor, and employers are provided with extraordinary powers to direct an injured worker to do a wide range of things, even if this contradicts the views of their treating doctor.

Workers can be directed to see health providers of their employer's choice, to follow particular directives about returning to work and to undertake a wide range of job search activities, akin to Centrelink job search requirements. The definition of "suitable

employment" has been broadened to include any employment including self employment and gives the employer the right to decide if it is reasonable for a worker to relocate in order to get another job.

The contents of the plan are known as "employee responsibilities". Workers must follow this plan even if it contradicts the advice of their treating doctor, or risk having sanctions applied, including the suspension or cancellation of their compensation.

Important protections for workers are removed, including the right to have the plan reviewed by an independent body. Under the proposal any appeal about the contents of the plan is made to the employer who has 30 days to respond.

The employer can revoke or change the plan at any time without consultation, while an employee must notify their employer in writing of anything that would prevent them from meeting their obligations under the plan within 3 days.

Schedule 3 – scheme integrity

Statutory timeframes for decision making

Currently there are no statutory timeframes in place for claims to be determined under the SRC Act and the appeals process is difficult. Licensees report against Key Performance Indicators (KPIs) for determining claims. These are currently 20 calendar days for injury and 60 calendar days for diseases. There are no penalties applied for failure to meet KPIs.

While FSU is pleased to see the introduction of statutory timeframes in this Bill, the timeframes proposed are the worst in the country, (see table below)

Jurisdiction	Timeframes for claim determination
Comcare proposal	30 days (injury) 70 days (Disease, designated injury or aggravation of designated injury)
NSW	Provisional liability within 7 days, decision on ongoing liability within 21 days
Vic	28 days
Qld	20 business days
WA	14 days
SA	10 Business days
Tas	84 days
NT	10 days
ACT	28 days

There are no penalties proposed for employers who do not meet these timeframes. Where timeframes are not met, the worker's claim is deemed to have been rejected.

Right to privacy

New sections proposed remove a worker's right to any kind of privacy in their relationship with their treating doctor. Workers can be required to provide information or documents relevant to their claim as requested to their employer within 14 days. Failure to provide this information can result in the employer refusing to deal with the claim.

In addition to workers being required to provide information, a 3rd party can also be requested to provide information without the permission of the worker. We have seen many examples of employers fishing for information they can use to decline a claim, and believe that this will result in more of this kind of behavior.

Maria worked for a major bank. In 2009 she suffered a psychological injury at work. The employer did not dispute that she was suffering from a psychiatric condition or that this condition was work-related. The employer argued in the AAT that Maria had lied on her workers compensation form when she said she had not suffered from this condition previously. They based this on her reporting to her doctor several years earlier that she felt stressed when she was off work very ill with bronchitis for 3 months. The AAT decided that her claim was not excluded as feeling stressed was different from suffering a psychiatric condition.

Schedule 4 – Provisional medical expense payments

The Australian union movement has long advocated for the introduction of provisional medical expenses. The Comcare scheme has not had legislated timeframes for decisions to be made on claims, preventing workers from accessing the support for treatment that they require for extended periods. Generally, the earlier that treatment can be commenced, the better the health outcomes for the worker and the earlier they can return to work.

While we are pleased to see the introduction of provisional medical expense payments, schedule 4 does not go far enough. Key concerns with this section include:

- Expenses are capped at $5,000, regardless of the severity of the injury;
- Can only be made as one request (workers may have to seek medical treatment multiple times before liability is determined);
- If an employer decides not to make the payment, there is no right of appeal.

Schedule 5 – Medical expenses

FSU has serious concerns about the treatment of medical expenses in schedule 5, in particular:

- Comcare will create a set of clinical framework principles that will determine whether it is reasonable for a worker to have a particular treatment, this will apply across the board without regard to the individual situation or the advice of the worker's treating doctor. FSU believes that the person best placed to make decisions about the suitability of treatment is the treating doctor who is across all of the relevant details of the case;
- Comcare will decide how much compensation should be paid for medical treatment;
- Comcare will create a medical services table, outlining the amounts that will be reimbursed for particular kinds of treatment. Compensation paid will not exceed the amount in the table regardless of the actual cost of the treatment. This proposal will lead to injured workers being unable to access the treatment that they require.

Please see ACTU submission for further comment.

Schedule 6 – Household services and attendant care services

This schedule seeks to place restrictions on access to household services and attendant care services. At present, workers with significant incapacity and disability can access reasonable costs to pay for services.

The Bill proposes limiting access to these services to a maximum period of 3 years from the date of the injury, or if the person is discharged from hospital after a 30 month period, then for 6 months from the date of hospital discharge, except in cases of catastrophic injury.

Catastrophic injury is undefined and is to be left to regulations. If there was a similar definition used as is suggested for the National Injury Insurance Scheme (NIIS), this would include spinal cord injury resulting in quadriplegia and paraplegia, traumatic brain injury, multiple amputations, certain burns and traumatic blindness.

Below is an example of an FSU member currently receiving household care who would be ineligible under the above definition of catastrophic injury.

Faye worked for a major bank. She was involved in a motor vehicle accident that resulted in the loss of her right arm.

Faye receives household assistance for 8 hours per week. This assists her with household tasks such as vacuuming and mopping, changing sheets, and hanging out washing. She also

receives attendant care services for washing her hair. There are regular reviews of the assistance required and threats to remove services.

In 3 years, Faye will still not have an arm. Cutting off household support will cause Faye both financial duress and cause problems for other parts of her body. Faye's specialist advice suggests that the overuse of her left arm is already causing significant damage. This would only be exacerbated by removing access to household assistance.

Schedule 7 – Absences from Australia

This schedule would stop compensation payments if a worker leaves the country for 6 weeks. The worker may have valid reasons, including to receive care from family while injured and this should not impact on ongoing payment of workers compensation.

Schedule 8 – Accrual of leave while receiving compensation

This section overrides state and territory legislation to provide that an employee is no longer able to accrue leave while on workers compensation. This is unfair and serves to further penalise injured workers for their injury.

Schedule 9 – Calculation of Compensation

Worker's compensation schemes provide ongoing access to income while an employee is recovering from a workplace accident. This bill attempts to move from the idea of income replacement to something more akin to a welfare payment. This will leave injured workers in a situation where not only are they trying to deal with having a serious injury, but they are also placed under financial duress.

The bill proposes a number of ways in which injured worker's incomes would be cut. These include:

1. The earlier introduction of step-downs in payments after 13 weeks;
2. Income capped at 150% AWE from 13 weeks;

1. Early introduction of Step downs in payments

The SRC Act currently has a step down of income for injured workers after 45 weeks. The Bill proposes commencing cutting workers incomes after 13 weeks as follows:

1-13 weeks	100%
14-26 weeks	90%
27-52 weeks	80%

52 weeks 70%

This is earlier than the timing of step-downs in a number of the state jurisdictions and the final step-down to 70% of income is lower than any scheme other than the ACT.

This Bill appears to suggest that the key reason that workers would be off work after 13 weeks is that they are taking advantage of the system and that step-downs are required in order to provide an incentive to return to work. There is no evidence that this is required with the Comcare scheme having the best return to work rates of any scheme in the country.

The proposed dates of these step downs are completely arbitrary in that they take no account of whether the injury incurred by the worker prevents a meaningful return to employment, and fails to show an understanding of employers who delay workers from returning to work by failing to provide suitable duties.

Wendy was employed by a major bank, she suffered a psychological injury as a result of repeated bullying and harassment from her manager. It took 24 weeks for her employer to identify a suitable position for her within the business that would not require her to have ongoing contact with the perpetrator of her injury. On her return she found that her previous manager had been promoted and she would now be required to work directly with this person again. Wendy was unable to return to work and has since left the bank.

The introduction of step-downs at 13 weeks will have a significant effect on our members. Analysis would suggest that a large proportion of injured workers employed by major banks would be subject to these step-downs.[5]

Employer	**% claims continuing beyond 13 weeks**
Commonwealth Bank Australia	25%
Commonwealth Insurance	100%
Commonwealth Securities	33%
National Australia Bank	72%
National Wealth Management	50%

In our recent survey of injured workers, we asked members about what impact the introduction of these step-downs would have on them if introduced:

It would make life very difficult to survive adding to the stress of chronic pain, anxiety and depression. I think it is a disgrace, I have worked for the bank for 43 years…the support is needed in these difficult times. FSU member - CBA

If that had happened to me it would have been a financial disaster. Let's hope it never becomes a reality. FSU member - *CBA*

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[5] SRCC & Comcare Annual report 2013-2014

It would mean I would lose my home or have to return to work and make my condition worse.

I had 4 surgeries which took me 3 years to overcome. I had a workplace injury as a result of negligence on behalf of my employer through no fault of my own. I have 12 months off in total and have a permanent injury. This new law would have had a significant financial impact on my family when they had already suffered as a result of my injury. FSU member NAB

Not only would the step down of payments occur earlier, the way that a week is calculated is proposed to also be changed to the disadvantage of workers. Presently each day of absence is counted individually to assess the number of weeks towards step down. This Bill proposes that any period of incapacity during a week would count as a week of incapacity in relation to step-downs.

2. Income capped at 150% AWE from 13 weeks;

Presently injured workers are paid full income replacement for 45 weeks, and then from 45 weeks on, there is both a step down in payments and an income cap of 150% of Average Weekly Ordinary Time Earnings of Full Time Adults (AWOFTA). The bill proposes to provide full income replacement for only 13 weeks before introducing step-downs and the cap on income of 150% of AWOFTA (AWOFTA is currently $1,476.00 per week or $76,767 per annum)

A senior financial planner is seriously injured in a car accident on the way to visit a client. She requires multiple operations and is off work for 12 months. Prior to the accident she was on an income of **$130,000** per annum, with the potential to earn up to double this is bonuses.

<u>Current</u>		
45 weeks of wage replacement	45 x $2,500	112,500
7 weeks of 75% of AWOFTA	7 x $1, 107	7,750
TOTAL		$120,250
<u>Proposed</u>		
13 weeks wage replacement	13 x 2,500	32,500
13 weeks 90% of 150 % of AWOFTA	13 x 1992	25,896
26 weeks 80% of 150% of AWOFTA	26 x 1771	46,046
TOTAL		$104,442

The FSU opposes any reduction in incomes for injured workers.

Schedule 11 – legal costs

With decisions about granting workers compensation to injured workers being made by the liable employer in the Comcare scheme, access to a timely, affordable and independent review process is critical for injured workers. The current process for appealing decisions made by the employer under the SRC Act is stacked against workers. It is lengthy, complex and expensive. Many workers do not have the legal, financial and emotional resources to effectively dispute a decision by their employer.

I ended up leaving the job before the claim was approved or denied due to stress (RSI injury)

I didn't pursue my claim because I was too tired mentally and stressed out. I felt weak and compelled to withdraw and resign from the bank rather than to continue at the detriment of my health. Sadly I haven't been able to reenter the workforce since then.

Initially I appealed but withdrew it as was told by HR that if I made any waves I would be given 3 months to find another job within X and if not successful then my employment would be terminated.[6]

At present if an employer declines a claim, the worker goes through a process of review, this starts with appealing the decision to the employer. Workers are not eligible to receive any assistance with legal costs at this stage to pursue their claim.

Appealing a disputed claim is a very complex technical process. Employers can of course pay for legal advice at this stage, with many employers in the finance industry directly employing legal specialists to head up their workers compensation areas. One of the finance sector licensees employs a Head of Health, Safety and Wellbeing who is a former Special Counsel at Minter Ellison. She has run workers compensation litigation at all levels including the Supreme Court and the High Court, specialising in matters involving statutory interpretation and administrative law. Reporting to her is the Manager for Workers Compensation who was also a workers compensation lawyer for Minter Ellison. Clearly an unrepresented worker with no understanding of the law in this area is in a very unequal position in this situation.

When internal review is exhausted, a worker can appeal the decision to the Administrative Appeals Tribunal. This is a very lengthy process (when the worker is often without an income). A review of matters heard in the AAT from finance workers in the Comcare scheme shows:

- The shortest time from date of injury to AAT decision was 1½ years;
- The longest time from date of injury to AAT decision was 5 years;
- The median time from date of injury to AAT decision was 2 years 7 months.

[6] Comments from FSU members in member survey, April 2015

- Approximately 40% of AAT decisions in the workers favour were appealed by the banks to the Federal Court, further extending to time for the matter to be decided.

Currently workers can recover some of their legal costs for the AAT process providing they are successful. This amount does not cover the legal costs involved with running the matter.

Rather than seeking to address these problems with the current lack of access to justice, Schedule 11 will exacerbate these problems as follows:

1. It will introduce a "Schedule of Legal Costs" – this will further restrict the access of injured workers to the legal support they need to have their matter heard;
2. It will empower the AAT to require that the costs incurred by the employer in running the matter must be paid by the worker if they are unsuccessful in their appeal. This will discourage many workers from putting in an appeal as the risk of losing the matter comes at a very high cost. Large employers spend a lot of money on their legal representation.

Schedule 12 Permanent impairment

Please see ACTU submission.

Schedule 14 – Gradual onset injuries

Please see ACTU submission.

Schedule 15 – Sanctions

We are concerned by the introduction of a number of sanctions which seek to penalise injured workers and increase the circumstances where an injured worker may be cut off from workers compensation unfairly, arbitrarily and through no fault of their own. We note that sanctions are not similarly applied to employers to ensure they carry out their responsibilities under the Act fairly and expediently.

For example, the proposed requirement under 29H for psychological injuries that a diagnosis must be confirmed by a mental health practitioner (not GP) within 12 weeks or compensation suspended will have an unfair impact on injured workers who may be receiving treatment from their GP and may not have access to a mental health practitioner within the proposed timeframe. Injured workers might also be unaware that failure to have

their diagnosis confirmed by a mental health practitioner within the 12 weeks would result in their compensation being suspended.

Cathy lives in a regional area and has suffered a psychological injury at work. She is undergoing treatment with her GP for depression. Access to mental health services in her area are limited and subject to a lengthy waiting list. It is common practice that the patient would receive treatment from their GP, after a period of time evaluate the effectiveness of that treatment and then the GP would escalate to a mental health specialist if appropriate.

Obligations of mutuality

We are concerned that worker's benefits will be suspended if they are in breach of obligation of mutuality, including:

<u>Failure to accept offer of suitable employment, failure to engage or continue to engage in suitable employment, failure to seek suitable employment</u>

We are concerned by the very broad definition of "suitable" employment and believe that any employment offer must be good work that will not reinjure the worker and must be reasonable, with regard to the injured worker's skills, experience and within reasonable commuting distance. We note that it can be incredibly difficult to seek out employment when suffering from a work-related injury and that the onus must be on employers providing suitable duties, maintaining a healthy and safe working environment and having a positive and worker-centred approach to rehabilitation.

Sally was employed as a lender for a major bank. She suffered an RSI injury and her doctor recommended changes be made to her workstation to prevent further injury. The bank was unwilling to make changes to the workplace and Sally was offered a position as a teller in another branch which would result in loss of status and pay and was not commensurate with the skills Sally has obtained as a lender.

<u>Refusal or failure to undergo a medical examination</u>

We note that it is the experience of FSU members that medical appointments with Independent Medical Examiners can be scheduled with little notice.

I was told when and where I had to visit the (bank appointed) doctor. It was not negotiable and I was given only a few days notice. My injury stopped me from driving and it was very stressful.

Absent from work without a medical certificate

We note that communication by employers with injured workers on their rights and obligations is not always as clear and forthcoming as it should be.

Naz lodged a workers compensation claim for a carpal tunnel injury and resulting depression. She hadn't realised she was obliged to provide medical certificates, because she had provided reports from her GP and psychologist. It took the bank a number of months to notify Naz of her responsibility to provide certificates, which she did immediately when she was notified. The bank then request Naz pay back $2000 in payments that she had received when she hadn't provided a medical certificate.

Does not follow medical treatment advice (could be the employer's doctor not their treating medical practitioner)

We note that it is not unusual for Independent Medical Examiners and treating medical practitioners to issue conflicting medical treatment advice

Jane's treating medical practitioner placed a number of restrictions on her return to work, including rest breaks and limited hours of work. Jane was referred to an Independent Medical Examiner who believed that there should be no restrictions on her return to work. Jane was concerned that an IME who had spent very little time with her was providing advice that was contrary to her own doctor's, and could exacerbate her injury.

Fails to fulfil their responsibilities in workplace rehabilitation plan

As outlined in the response to Schedule two, the FSU has serious concern about the model for workplace rehabilitation plans as outlined in the Bill. Worker's should not be penalised for failure to comply with unreasonable directives outlined in a plan that may be contrary to the advice of their treating doctor.

Conclusion

Workers compensation systems should provide income replacement and access to medical treatment and other necessary support for injured workers, as well as suitable rehabilitation to ensure the safe return to good work.

The Safety Rehabilitation and Compensation (Improving the Comcare scheme) Bill, removes income and medical expenses from injured workers, saving money for some of the largest and most profitable employers in the country.

The FSU believes it should be opposed.