THE AUSTRALIAN INDUSTRY GROUP SUBMISSION

Response to:
Australian Government
Department of Education, Employment and Workplace Relations

Review of the Safety, Rehabilitation and Compensation Act Report

May 2013

This submission is made on behalf of The Australian Industry Group (Ai Group) in response to the Report of the *Review of Safety, Rehabilitation and Compensation Act 1988* released by the Government of Australia, Department of Education, Employment and Workplace Relations in March 2013.

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other industries. The businesses which we represent employ more than 1 million employees.

It is an organisation committed to helping Australian industry with a focus on building competitive and sustainable industries through global integration, skills development, productive and flexible workplace relations, infrastructure development and innovation.
The organisation provides practical information, advice and assistance to help members run their businesses more effectively. It ensures through policy leadership that members have a voice at all levels of government, by representing and promoting their interests on current and emerging issues.

Ai Group members operate small, medium and large businesses across a range of industries.

We are represented in ongoing tripartite consultative forums, and other consultative processes, with governments, occupational health and safety and workers compensation regulators. We have been actively involved in reviews of workers compensation schemes across Australia.
Ai Group is a member of Safe Work Australia, with representation on the Strategic Issues Group – Workers' Compensation.

Ai Group's information, advisory, consulting, legal and training services brings our staff into contact with a broad range of businesses across Australia who share with us the opportunities and challenges that arise when running a business in the current regulatory environment. Every day our specialist Safety and Compensation staff interact with employers who need advice or assistance to meet their current workers compensation obligations. This practical exposure to workers compensation issues within businesses, combined with the expert knowledge of our experienced advisers, informs our considerations and ensures that the legal, technical and day to day practical implication of those laws in the workplace are all taken into account.

Many of the recommendations being made in report paper are relevant to all users of workers' compensation schemes, not just those within Comcare. Ai Group's interest in the Comcare scheme stems from a broader focus on equitable and effective workers compensation schemes, and a recognition that any changes to one scheme may become the model for changes in other schemes.

Ai Group also has members and clients who operate as self-insurers within the Comcare scheme and others who would like to do so in the future. It is our understanding that the Comcare licencees association (the SRCLA) will be making a detailed submission on behalf of their members.

INTRODUCTION

In this submission Ai Group has made comments on provisions that are of particular relevance to our members, either within the Comcare scheme, or due to the potential to influence other jurisdictions.

We have not made comments on recommendations that are largely administrative in nature, or those that relate to the obligations between various premium payers, which is particularly relevant to government department, but not to private employers.

Ai Group would welcome the opportunity to further discuss any of the recommendations with the Department.

RECOMMENDATIONS ABOUT THE STRUCTURE OF THE ACT

Recommendations 3.1 to 3.3

Ai Group supports restructuring of the Act as outlined in the recommendations. Employers would be assisted by a structure which deals with all of the employer obligations and worker entitlements in one section, in particular those issues that are encountered on a daily basis.

We also support the view in section 3.7 of the report that “the process of re-writing the SRC Act needs considerable care and thought”. Any rewriting of legislation creates a risk that there may be inadvertent changes to policy, with unintended consequences.

It is noted that the Victorian government is currently undertaking work to restructure their Act; if successful this could form a model for the structure of the SRC Act.

THE HAWKE REPORT RECOMMENDATIONS

Recommendations 4.1 to 4.8

Chapter 4 of the report addresses the recommendations of the Hawke report that may require legislative change. The recommendations are reproduced in Appendix E of the report; however, the entire Hawke Report has not been released to the public.

RECOMMENDATIOS IN RELATION TO THE SRCC

Ai Group does not have any comments to make on these recommendations.

RECOMMENDATIONS IN RELATION TO LICENSEES

Under the SRC Act, provisions currently exist to allow national employers who meet a *competition test* to apply to become licensees (self-insurers) within the Comcare scheme. To satisfy the *competition test* an employer has to demonstrate that they are in competition with a Commonwealth authority or another corporation that was previously a Commonwealth authority.

The power to declare that an employer meets the *competition test* rests solely with the Minister, who has wide discretion to make a decision, or not, as outlined in s.100.

> (1) If the Minister is satisfied that it would be desirable for this Act to apply to employees of a corporation that:
>
> (a) is, but is about to cease to be, a Commonwealth authority; or
> (b) was previously a Commonwealth authority; or
> (c) is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority; the Minister may, by legislative instrument, declare the corporation to be eligible to be granted a licence under this Part.
>
> (2) However, the Minister is not required to consider a request for a declaration under subsection (1).

In December 2007, the Federal government introduced a moratorium on consideration of applications for the *competition test* to be applied, effectively restricting national employers (other than those meeting criteria in 100(1)(a) or (b)) from becoming licensees under the Comcare scheme.

A key outcome of implementing recommendations 4.4 to 4.6 would result in a removal of the *competition test*, and the insertion of a definition of *national employer.* This would result in the ability for any national employer (as defined) to apply to be a licensee (self-insurer) under the Comcare scheme.

These recommendations are generally in line with recommendations of the *Productivity Commission Inquiry Report No.27 – National Workers' Compensation and Occupational Health and Safety frameworks – 16 March 2004:*

> The Commission recommends that the Australian Government develop an alternative national workers' compensation scheme to operate in parallel to existing State and Territory schemes by taking the following steps progressively:
>
> • step 1 — immediately encourage self-insurance applications from employers who meet the current competition test to self-insure under the Comcare scheme, subject to meeting its prudential, claims management, occupational health and safety and other requirements;
>
> • step 2 — commence, at the same time, the development of an alternative national self-insurance scheme for corporate employers who wish to join such a scheme, and who meet prudential, claims management and other requirements; and
>
> • step 3 — in the longer term, consider the establishment of an alternative national premium-paying insurance scheme for corporate employers who so wish, including small to medium enterprises, which would be competitively underwritten by private insurers and incorporate the national self-insurance scheme established under step 2.

Ai Group strongly supports implementation of these recommendations to allow national employers to enter a scheme which would enable them to have one set of laws, and one set of licensing obligations, across the country.

As a first step, prior to legislative change, we encourage the Federal Government to remove the moratorium on the consideration of the *competition test*.

RECOMMENDATIONS ABOUT ELIGIBILITY FOR COMPENSATION

Recommendations 5.1 to 5.7

Recommendation 5.1 – Deeming provisions

Ai Group understands the rationale behind the proposed deeming provisions, which are largely consistent with most state/territory arrangements.

Where a worker would otherwise not have coverage within a workers' compensation scheme (e.g. because they are a sole-trader), the application of the deeming provisions will be relatively straightforward.

When deeming provisions are applied within a state/territory jurisdiction the worker stays within the same scheme (with same benefits and entitlements); deeming provisions only impact on which employer has obligations, particularly to pay premiums.

However, it becomes complicated if a worker would otherwise be entitled to compensation within the state/territory (e.g. as a one person company). The application of deeming provisions in this situation would mean that a worker would change jurisdictions, with subsequent change in benefits and entitlements. When considering premium implications, it may also be possible, that the employing entity would be required to pay premium in the relevant state/territory as well as the Comcare employer having to pay premium for the same worker.

It has taken many years to achieve a consistent approach to cross border issues between the states/territories. These provisions are designed to ensure that: workers and employers are unable to *jurisdiction shop* for the best benefits; and that employers did not find themselves liable for premium in multiple jurisdictions for the same worker.

The proposed deeming provisions may create similar difficulties; determining how to address them prior to implementing such a recommendation is very important.

If this recommendation is adopted, there needs to be careful consideration about how the overlapping jurisdictional issues would be addressed.

Recommendation 5.2 – Psychological injuries (general)

Ai Group supports the recommendation that an employee's perception of a state of affairs will only provide a connection with employment where that perception has a reasonable basis.

This will allow for an equitable application of the law to employers who must be able to run their businesses in a reasonable way without a claim being accepted due to an unreasonable perception on behalf of the worker.

Recommendations 5.5 and 5.6 – Psychological injuries (reasonable administrative action)

The manner in which the *reasonable administrative action* exclusion is written in most legislation results in the use of double negatives which can be difficult to analyse; recommendation 5.5 is complicated by this factor:

> … the SRC Act [should] be amended so that the reasonable administrative action exclusion in s5A(1) operates only where the reasonable administrative action taken in a reasonable manner in respect of the employee's employment has contributed, to a significant degree, to the disease, injury or aggravation.

It is apparent from the commentary in the report related to this recommendation that the intent is for a worker to **be entitled** to compensation for a psychological injury resulting from reasonable administrative action, if there are other work-related factors which have also contributed to the psychological injury.

Hence, the recommendation will narrow the current exclusionary provisions around reasonable management action.

Section 5A(2) currently includes a list of actions that would be seen as *administrative actions.* The list is non-exhaustive, meaning that other actions may be included. We recognise that this has led to some litigation, as outlined in the report.

Recommendation 5.6 proposes to narrow the current exclusionary provisions by turning this non-exhaustive list into a complete list, i.e. if the action does not specifically meet one or more of the criteria listed, it does not meet the definition of *administrative action.*

It is Ai Group's view that it is not possible to provide a complete list that would reflect all of the appropriate actions that should be defined as *administrative action*. Changes made to the Victorian Act in 2010 provide a non-exhaustive list of 14 actions that may be seen as *management action* (being the exclusionary term utilised in that legislation). That list encompasses a range of actions that are not in the current SRC Act list, for example: provision of leave of absence; investigation into alleged misconduct; transfer; demotion, redeployment or retrenchment; and training.

This approach was adopted in Victoria because the previous exhaustive list had limited application of the exclusion beyond what had been intended.

It is particularly concerning that the current list in the SRC Act includes at (f) reference to "an employee's **failure** to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit". The use of the word failure means that a worker could make a claim for a psychological injury if they were successful in obtaining a promotion but "stressed" by the process. It also means that the exclusion would not apply to a reasonable decision to transfer a worker. It is also unclear how the current list would apply to an investigation into alleged bullying which ultimately finds no reason to pursue any form of counseling or disciplinary action.

It is crucial that a worker is not able to claim compensation for a mental injury when an employer is taking “reasonable action in a reasonable manner”.

Employers must be able to make the necessary decisions to manage the business effectively, respond to poor performance and investigate concerns/complaints about an employee’s behavior (including complaints about harassment or bullying). If the action of the employer relates to complaints about harassment or bullying, they not only have the right to manage the issue, they have a legal obligation to manage the issue. They must be able to do so in an appropriate manner, without the result of a successful workers compensation claim.

Ai Group does not support any narrowing of the current exclusionary provisions related to reasonable administrative action taken in a reasonable manner. If the concept of a complete list is adopted, the current list must be greatly extended.

Recommendation 5.3 – Incidents that are a manifestation of an underlying condition

The report recommends that incidents that are a manifestation of an underlying disease (such as heart attacks, stokes, spinal disc ruptures caused by degenerative disease and similar phenomena) should only be covered for workers’ compensation on the same basis as a “disease” – that is, where the incident was contributed to, to a significant degree, by the employee’s employment.

Ai Group strongly supports this recommendation.

Recommendation 5.7 – Journey claims and on-call work

This recommendation states that “where an employee is “on call”, the employee’s journey to work should be covered by workers compensation”.

Ai Group supports this recommendation on the basis that a journey to respond to an “on call” request is travel for the purposes of work.

It is essential that “on call” is appropriately defined and that the journey is one that only includes travel between home, or the place where the employee receives the message to attend work, and the place of work itself.

RECOMMENDATIONS ABOUT REHABILITATION

Recommendations 6.1 to 6.21

Recommendation 6.1 – Early intervention

Ai Group supports the concepts outlined in paragraph 6.5 of the report, in order to facilitate effective return to work. However, Ai Group does not support this level of prescription being included within the SRC Act; it would be appropriate to outline them as good practice in the proposed Code of Practice.

We are also concerned with the use of the words *early intervention* which, which used as a descriptor, may be interpreted inappropriately by some employers and lead to interventions that are too soon. A more appropriate terminology may be *timely intervention.*

Recommendation 6.2 – Provisional Liability

The report does not make it clear why the recommendation to provide for provisional liability for up to 12 weeks of incapacity payments and $3,000 medical expenses is included in the chapter on rehabilitation.

Paragraph 6.23 does state that "Many Australian workers compensation schemes have introduced mechanisms that facilitate early intervention through early access to compensation and encourage timely decision making."

It is Ai Group's view that early (or timely) intervention can occur separately from the payment of compensation.

Whilst not stated in the report, it can be extrapolated that there is a view that provisional liability will improve return to work outcomes.

Each year Safe Work Australia produces a *Comparative Performance Monitoring Report.* The most recent report *(Edition 13, October 2011),* includes information for the period 2005/06 to 2009/10. It identifies some interesting information about durable return to work rates:

- In the summary of findings, it is reported that, in 2009/10, "Victoria and Queensland recorded the most substantial increase in the durable return to work rate";

- Indicator 21 – Durable return to work rate illustrates that:
    - Queensland has either equaled or out-performed New South Wales in 4 of the 5 years reported; and
    - In 2009/10, Victoria and Queensland had better durable return to work rates than New South Wales

New South Wales has provisional liability; Queensland and Victoria do not. Hence it is difficult to create an objective link between provisional liability and successful return to work.

At paragraph 6.28 of the report it is indicated that "as at 17 January 2013, 83% of all claims lodged in the 2011-12 financial year were (ultimately) accepted". This appears to be a justification for implementing provisional liability without concerns about potential abuse. However 83% of claims accepted, also means 17% have not been accepted; this is a significant proportion of the total claims lodged.

It is the view of Ai Group that provisional liability has the potential to significantly increase the circumstances of workers' compensation being utilised for the purposes of short term unsubstantiated absences, creating an inequitable scheme. Subsequently, this has the potential to increase the costs to individual employers and the scheme.

Ai Group strongly rejects the recommendation to introduce provisional liability.

If provisional liability is adopted, it must be accompanied by a strong set of *reasonable excuses*, which are applied appropriately.

Recommendation 6.6 – Training of Return to Work Coordinators

It is our understanding that reference to "the person vested with the authority to assist he employer in the discharge of the employer's rehabilitation responsibilities" is a reference to the role that is known in other jurisdiction as either: a Return to Work Coordinator; or a Rehabilitation and Return to Work Coordinator.

Ai Group agrees that it is important that the Return to Work Coordinator (RTWC) has the necessary skills and knowledge to undertaken the role. However, we do not believe that it is always necessary for a prescribed course of training to be undertaken.

Consideration should be given to an alternative approach, adopting the words used in section 197 of the Victorian Accident Compensation Act, which requires that the RTWC " …has an appropriate level of seniority and is competent…"

Recommendation 6.9 – Injury Management and Rehabilitation Code of Practice

Ai Group supports the development of a high level Code of Practice, in consultation with employers, which outlines how duties under the SRC Act can be met. However, it is crucial that *best practice* advice and guidance is dealt with in guidance materials that can be more efficiently updated as better knowledge become available.

Ai Group does not support the inclusion of an obligation for employers to ensure that a rehabilitation management system is in place. It would be more appropriate to identify this in the Code as an option for employers to adopt.

Recommendation 6.10 and 6.11 – injury Management Plan

Ai Group supports the concept that the ongoing management of an injury and return to work is an important part of achieving successful outcomes in return to work. However, we are concerned about the imposition of an arbitrary timeframe of 28 days for the development of a documented injury management plan. In some cases it may be appropriate to wait longer; in some cases it may be required earlier. The focus should be on planning the return to work, with documentation provided as appropriate.

Ai Group supports the recommended provisions in 6.11 which require the employees and employer to cooperate in the preparation and implementation of the plan. If an employee fails to do so, it is appropriate that they have their benefits suspended; if an employer fails to do so, it is appropriate that a penalty may be applied.

Recommendation 6.20 and 6.21 – Return to Work Inspectorate, Notices and Undertakings

Ai Group does not support the introduction of a dedicated return to work inspectorate, as it duplicates the role of Comcare as either the "insuring" body or the licensing authority in the case of self-insurers. Within the Issues Paper it was identified that the major concern with return to work relates to government agencies and authorities; if this is the case, any inspectorate should be focusing on these organisations. Self-insurance audits should be sufficient to identify any issues within a self-insurer.

If an inspectorate is introduced, Ai Group would strongly recommend considering the Victorian model of operation which appears to have had some good success in achieving good outcomes. In this model, whilst improvement notices are an available enforcement tool, the focus is on facilitating a successful return to work through information and education, rather than a focus on penalties.

RECOMMENDATIONS ABOUT COMPENSATION FOR INJURIES AND DISEASE

Recommendations 7.1 to 7.37

Recommendation 7.4 – Minimum earnings

Section 19(6) of the SRC Act creates a *safety net* of minimum earnings. Ai Group supports an amendment to this section which removes the safety net for an employee who has been deemed to have an ability to earn.

Recommendation 7.9 – Interaction with the Superannuation Guarantee Act

Ai Group does not support the recommendation that amendments are made to the Superannuation Guarantee Act (SGA) so that compensation payments made for weekly compensation are deemed to be "ordinary time earnings" for the purposes of the SGA.

Dependant on how such an amendment was written it has the potential to have implications far broader than just applying to Comcare.

Any proposed changes to the SGA must be the subject of broader consultation and economic analysis.

Recommendations 7.13 to 7.15 – Step-downs and earnings

Ai Group supports the introduction of step-downs at 13 weeks, 14 weeks and 26 weeks; this is in contrast to the current approach which has one step-down at 45 weeks.

The proposed treatment of earnings appears to be an equitable approach.

Recommendation 7.16 – Retirement Age

Ai Group supports the amendment proposed which will link eligibility to workers' compensation to the age required to qualify for the age pension, rather than to age 65 as is currently the case. This will address anomalies in the legislation that have been created by relatively recent increases to the age at which a person can access the aged pension, which will be phased in over coming years.

Ai Group does not support the increase in entitlement after retirement age from 104 weeks to 5 years. Such a change would bring about a significant inequity with other long tail schemes which have shorter periods prescribed.

Recommendation 7.28 to 7.29 – Linking treatment to a Clinical Frameworks

Ai Group supports the recommendations that will link the compensability of medical treatments to objective standards, such as a Clinical Framework. It is Ai Group's view that this is of significant benefit to injured workers who should be able to have confidence that the treatment they are receiving is of value, and has been objectively assessed.

RECOMMENDATIONS ABOUT COMPENSATION FOR PERMANENT IMPAIRMENT

Recommendations 8.1 to 8.5

Recommendation 8.4

Ai Group notes the lack of consistency between the maximum impairment benefit and the maximum death benefit. In the report it is identified that Victoria is currently the only jurisdiction that has the same benefit for both entitlements. It should be noted that the Victorian situation arose because, prior to the Hanks review in 2008 (and the subsequent legislative changes) the amount payable for a death under the Victorian scheme was significantly less than that payable for a permanent impairment. Ai Group accepted that this was inequitable.

However, the proposition here is different.

When there is a permanent impairment payment there continues to also be access to weekly compensation; hence the total benefits paid are not just those for the permanent impairment. In order to consider the real internal equities, consideration must also be given to the weekly compensation payments.

Ai Group does not support the recommendation

RECOMMENDATION ABOUT CLAIM DETERMINATION, RECONSIDERATION AND REVIEW

Recommendations 9.1 to 9.20

Recommendation 9.1 – Electronic notification of injury and lodgment of claim forms

In general Ai Group supports the introduction of electronic systems. However, it is crucial that such systems are linked to the employer, not the determining authority.

Recommendation 9.2 – Time frames to forward claims

Ai Group supports a prescribed timeframe for the lodgment of claims. However, we believe that three days is too short a timeframe. Five working days would be more appropriate.

Recommendation 9.3 – Dates for determining liability

Ai Group supports the dates proposed, and that a failure to meet these timeframes would be that the claim is deemed to be rejected. This would allow the worker to initiate appropriate appeal processes in a timely manner.

Recommendation 9.4 – Medical certification for psychological injuries

If adopted, this recommendation would implement a requirement for a worker with a psychological injury to have a specific diagnosis by a psychiatrist, psychologist of specifically trained general practitioner, if benefits are to continue beyond 12 weeks.

Ai Group believes that this is a valuable enhancement that would provide great benefit to workers who have had a diagnosis from a GP who does not have specific training in this area. Too often our members see psychological claims drag on, with no clear treatment plan for the worker.

We believe it has a strong potential to enhance the treatment and recovery of the worker, by requiring earlier referral to an expert.

Recommendations 9.9 to 9.10 – Constraints on the activities of licensees and determining authorities generally

Ai Group does not support these recommendations which place tight controls over the activities of licensees within the legislation

Recommendation 9.14 – Linking decision of the Fair Work Commission with an assessment of *Reasonable Administrative Action*

In the submission in response to the issues paper Ai Group stated: "as a minimum, it should be clear that, if an employer handles an issue appropriately under the Fair Work Act, the exclusion related to mental injury should be applicable".

In this recommendation, it is proposed that an employer and an employee should be able to rely on any determinations made by the Fair Work Commission (FWC), as to the reasonableness of an employer's action, in the determination of a claim which involves the exclusionary provisions related to psychological injuries, i.e. *reasonable administrative action.*

Initial consideration of this provision has some attractions. As an organisation that advises employers on both issues, it is particularly difficult when employers apply a "fair" process which withstands the scrutiny of relevant bodies under the Fair Work Act, only to fall foul of workers compensation legislation.

However, the linkage to a Fair Work determination highlights a number of potential difficulties, as summarised below:

- In many cases a psychological injury claim will be determined before any FWC decision is made (especially if the decision is to accept the claim); hence the FWC determination would be unable to influence the initial decision.
    - if a claim was rejected, and a subsequent FWC determination ruled that the action was unreasonable, the claimant would expect that the workers' compensation claim would be accepted
    - however, it is unclear how a decision to accept a claim could be later overturned if the FWC decided that the action was fair.

- If a worker lodges a claim for psychological injury, they may be encouraged to also initiate a FWC action, in order to increase the likelihood of a successful action – hence increasing the number of issues being considered by the FWC and also encouraging further disputation.

- If a workers' compensation claim and a FWC hearing are concurrently being considered, an employer may be less willing to settle a claim with a worker if the outcome of the FWC action will impact on the determination of the claim. This will be heightened by the fact that a person cannot give up their right to workers' compensation as part of a deed of release made as part of an agreement in the FWC.

- If a workers' compensation claim is rejected because of *reasonable administrative action*, an employee may agitate a claim in FWC in pursuit of an outcome which could potentially overturn the initial rejection of the claim, thereby using FWC as a 'quasi appeals' process for the determination of workers compensation claims. This will encourage unnecessary disputation in FWC.

- If a decision is made to modify the list of actions (as outlined in recommendation 5.6), it may be that the action being considered by the FWC is not consistent with those provisions – hence creating confusion for both employers and employees.

Recommendation 9.15 to 9.16 – Defining a jurisdiction for the Fair Work Commission to review reviewable decisions.

Ai Group strongly opposes this recommendation. Ai Group is concerned about the potential conflict that may arise if reviewable decisions related to workers' compensation claims are considered in the FWC. Employers may be appearing in the FWC on a range of matters that are hotly disputed industrial issues. It would not be appropriate for a workers' compensation claim against that employer to be determined by a Commissioner who had formed views, negative or positive, about that employer in a very different environment.

Ai Group does not consider workers' compensation matters, including matters about rehabilitation programs appropriate for determination in the industrial tribunal.

Issues associated with delays in the AAT should be addressed in another way, preferably directly involving the AAT, and not removing its powers.

Recommendation 9.19 – Ability for Comcare to recover overpayments made to an employer

It may be appropriate to have provisions to allow for recovery of some overpayments, especially if the employer has provided false or negligent information to Comcare. However, if the overpayment is due to an error on the part of Comcare, which resulted in the employer overpaying the worker, such recoveries would not be appropriate.

Recommendation 9.20 – Capacity of Comcare to compensate claimants for financial detriment caused by defective administration

Ai Group supports this recommendation, and proposes to extend the capacity further. Comcare should also be able to compensate employers (including licensees) who suffer financial detriment caused by defective administration.

RECOMMENDATIONS ABOUT LIABILITIES ARISING APART FROM THE ACT

Recommendation 10.1 to 10.3

Ai Group supports the unnumbered recommendation, in paragraph 10.30, that the current restrictions on common law access are retained without amendment.

The commentary around recommendations 10.1 to 10.3 focuses on:

- the ability for a worker to make a common law claim against a third party;
- the ability for compensation received under the scheme to be adjusted according to any payments received through such an action; and
- the ability of Comcare or a licensee to *stand in the shoes* of the employee to seek what is generally described as a *third party recovery.*

It is crucial that licensees within the Comcare scheme are able to effectively achieve such indemnity and access to recovery. We are not in a position to comment on the legal complexities associated with the various options proposed, and the final recommendation to adopt a provision similar to section 151Z in the New South Wales Act.