



Electrical Trades Union

COMCARE REVIEW

December, 2024

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



20 December 2024

About the ETU

The Electrical Trades Union of Australia (ETU)¹ is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing more than 67,000 workers around the country.

The ETU has members who are captured by the Comcare scheme as a result of being employees of the Australian Government, Australian Government authorities and corporations as well as self-insurers including Australian Postal Corporation, Bis Industries Limited, CSL Limited, Pacific National Services Pty Ltd, Telstra Corporation Limited, Thales Australia Limited, Virgin Australia Airlines and Visionstream Pty Ltd (which is now Ventia).

The ETU had a representative on the board of the Safety, Rehabilitation and Compensation Committee (SRCC) until October 2024.

Acknowledgement

In the spirit of reconciliation, the ETU acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples today.

¹ Being a division of the CEPU, a trade union registered under the *Fair Work (Registered Organisations) Act 2009* (Cth).

The Need for Change

The ETU welcomes the opportunity to respond to the issues paper concerning the review of the *Safety, Rehabilitation and Compensation Act 1988 (Cth) (SRC Act)* which regulates the Comcare scheme.

We have had the opportunity to review the submission of the Australian Manufacturing Workers' Union (**AMWU**)'s submission and support the matters and recommendations contained therein, and make the following recommendations:

1. Renaming the SRC Act the *Commonwealth Workers' Compensation Act*.
2. Ensuring any primary objective in the Act is for the benefit of workers.
3. Clearly defining who is considered a 'worker' for the purpose of the SRC Act.
4. Mandating genuine tripartite consultation, including in license application and renewal.
5. Providing access to common law remedies.
6. Removing self-insurers from the scheme or, if not possible, imposing a moratorium on new non-Commonwealth entrants and providing the ability to suspend or cancel the licences of self-insurers who have repeatedly been found to have acted in bad faith or contravened the Act.
7. Improving the claims management process, including by ensuring the timely review of claims, providing mental health support to claimants, and providing tailored services for vulnerable claimants such as First Nations peoples.
8. Introducing provisional liability.
9. Requiring best practice suitable duties and return to work support and provisions.
10. Redefining early intervention to ensure that it cannot be used to deter or mislead workers from making a claim.

The ETU supports the need to strengthen the SRC Act to better support injured workers by (without limitation) the inclusion of objects and principles that will ensure the scheme is designed and implemented in a way that practically supports workers in line with international best practice workers' compensation principles.

The SRC Act is almost 40 years old. In that time, working lives have changed dramatically as a result of advances in technology, climate change and the ever-evolving industrial landscape including, relevantly, the increasing admittance of non-commonwealth employers into the scheme as self-insurers. As a result, the SRC Act has become outdated and no longer meets the needs of injured workers.

Self-Insured Employers

Further, a scheme that was designed to meet the needs of the Commonwealth government and its employees is increasingly being exploited by private and publicly listed corporations that have become self-insurers under the SRC Act. There is an inherent conflict between a profit-driven employer, like a private or publicly listed corporation, assessing claims that its employees have been injured at work. Likewise, there is an inherent conflict in such employers choosing which doctors are engaged to assess employees' fitness to work as well as which rehabilitation providers are engaged to treat their

employees. Doing so also takes away employees' agency in relation to their own rehabilitation. It also incentivises doctors and rehabilitation providers to provide services in a manner that will gain them further work from the employer, which may not always align with the best interests of the injured employee.

The ETU supports the removal of self-insured licences. However, if they are to continue then there needs to be a requirement that self-insurers act in good faith. In addition, there must be the ability to suspend or cancel the licences of self-insured employers who have repeatedly been found to have acted in bad faith or contravened the SRC Act.

Claims Management

ETU members' experiences with the Comcare scheme expose the deficiencies in its claims management process.

Three ETU members share their personal stories below. Their names have been changed to ensure their anonymity and to protect them against reprisal from their employers.

Shane's story highlights how the inherent conflicts created by self-insured licenses (as mentioned above) erodes the claims management process such that the injured employees' best interests are not front and centre.

Kamala's story highlights the deleterious impact that the claims management process can have on the mental health of already injured employees. Her experience would have been significantly improved if the system provided for the provisional approval of all claims and a requirement to consult with workers and their treating practitioners regarding their return to work.

Ben's story also highlights the deleterious impact that the claims management process can have on the mental health of already injured employees. As an Aboriginal person, his experience would have been significantly improved with tailored support and guidance throughout the process.

Shane's Story

Shane got injured at work in his first job at age 19 while completing his traineeship through a Group Training Organisation. He went on to be employed by a private corporation that is a self-insurer under the SRC Act. During this employment, **he aggravated his initial injury at work during a period where his crew was down a team member and required to complete the same workload with less resources.** The exacerbation of his condition occurred **notwithstanding the fact that he raised concerns about safety and workloads with his employer.** Six months later, he was selected for redundancy.

Following his second injury, Shane was pushed to return to work even though he didn't feel ready:

"They took a section of my medical report out of context to deem me fit to work. A doctor hired by the employer assessed me over Zoom and claimed I could return to work, but I was still in constant pain."

As a result of his injury, for last 10 years, Shane has been in severe pain and needs assistance with basic tasks like putting on his shoes and socks. He has been under the ongoing care of GPs, physiotherapists and pain management specialists as well as having to undergo surgery. While his

Comcare claim was accepted, his medical expenses haven't all been covered by it and **he's been left at least \$11,000 out of pocket for necessary medical care.**

Shane has found the Comcare process incredibly confusing and stressful. His claim manager has changed numerous times over the years without an adequate handover leading to **miscommunications and unnecessary delays.** He has always felt at a loss as to where to go to get answers about his claim.

Kamala's Story

Kamala is employed by a government-owned corporation. She was injured at work because of malfunctioning equipment. Upon diagnosis, she was referred for physiotherapy however **it took eight months for her Comcare claim to be accepted and for her physiotherapy to be approved.**

Kamala found the Comcare process confusing and dispassionate. **She was pushed to increase her hours before she was ready which led to an aggravation of her injury.** In addition, the Comcare process created ongoing uncertainty for Kamala and left her feeling unsupported and overwhelmed as she attempted to navigate a complicated system while under immense stress. **Notwithstanding the impact that the process had on her mental health, she was not offered any mental health assistance or support.**

"The rehab process felt like a revolving door—nine claims' managers and repeated mistakes, including my personal medical information being sent to another worker's doctor. It was exhausting and stressful. At one point, they pushed me to increase my work hours before I was ready, leading to a near nervous breakdown."

Ben's Story

Ben is an Aboriginal employee of a government-owned corporation. Ben was involved in three traumatic workplace incidents which culminated in a mental health crisis (including suicidal thoughts) and a diagnosis of post-traumatic stress disorder (PTSD).

Ben was assessed by a doctor that his employer had appointed over Zoom. **The doctor claimed that Ben was fit to return to work and questioned the legitimacy of his symptoms. This exacerbated Ben's existing injury.**

In addition, Ben found the Comcare process complicated and overwhelming. **As an Aboriginal worker, he feels that he would have benefited from tailored support and guidance throughout the process.**